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THE CHRONIC
DRUNKENNESS OFFENDER

CHAPTER V

THE COURTS

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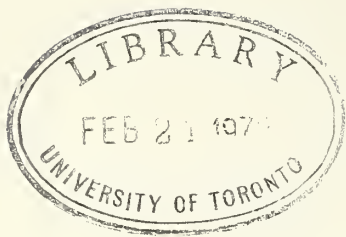
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CHAPTER V

THE COURTS

The court stands at the threshold of the revolving door; it is the keeper of the keys. The police determine who among the eligible drinkers will be brought to the threshold but the court decides on each occasion who will enter the jail and who will take other paths. In so doing, the court puts the seal of legitimacy on the actions of the other officials who deal with the offender.

But these legitimization ceremonies usually bear little resemblance to the ideal model of the serious criminal trial. Missing are the lawyers, the witnesses, the interested spectators, the hearing of evidence, and the weighing of the effect of various sentencing possibilities. The nature of the offence, various characteristics of the offenders, and the limited facilities at the disposal of the court, combine to produce perfunctoriness and routine. Most defendants plead guilty and are immediately assigned a standard penalty; when they are not it is usually because the magistrate is moved to exercise noblesse oblige, not because the rights of the defendants have been asserted. Given the character of the proceedings and their apparent lack of effect on the high rate of recidivism, it is not surprising that most of the participants - whether on the bench, in the dock, or in the body of the court - are likely, when asked, to express dissatisfaction with the system and their part in it.

In this chapter the drunk court proceedings and their consequences for the offenders will be discussed. The purpose is to furnish some of the background information needed to formulate proposals for making the courts more effective in alleviating the revolving door problem or, alternatively, proposals for new means of dealing with homeless alcoholics that would replace the traditional role of the courts. Our primary interest, it should be emphasized, is not in the legal propriety of the practices in drunk trials, but in what these trials accomplish. By concentrating on the functions at present performed by the courts, we hope to be able to identify those functions that could be performed by other means more likely to break the vicious circle.

We will begin by discussing in general terms the role of the judge or magistrate in drunk trials, with a view to making clear the anomalies that underlie the fairly widespread dissatisfaction of magistrates with this aspect of their job. Following this, the operation of the Toronto male drunk court will be dealt with in some detail, beginning with an impressionistic description of a typical day in court that is intended to lend immediacy to the ensuing analysis of the trial practices and sentencing patterns.

The data for this case study were gathered by one of the authors (K.W.) who attended the court daily from November 1, 1960 to October 31, 1961. He recorded all the available information on the defendants from court documents and noted the outcome of each trial, as well as recording all significant interchanges in court. The information on every fifth case was coded and placed on an I.B.M. card for analysis. Some comparable information in drunk trials in the court of Small City (pseudonym), a southern Ontario community of 40,000 - 50,000 population, was gathered retrospectively from court records for the same period.

In the next section, some findings from a questionnaire sent to magistrates throughout Ontario are discussed, in order to get a more representative picture of the opinions and sentencing practices of magistrates in a variety of communities. The reaction of the chronic offenders themselves to their experiences in court, important to an understanding of their alienation, are then described, using information derived from interviews with 230 recidivists in the Metropolitan Toronto Jail (known popularly as the "Don Jail"). Finally, we summarize the general conclusions about the functions of the courts in the revolving door system that emerge from these diverse accounts.

THE JUDGES' DILEMMA

Dissatisfaction appears to be endemic in the role that judges and magistrates¹ are forced to play in dealing with chronic drunkenness offenders in most North American jurisdictions. One source is the value-conflict

¹ "Magistrate" will be used as the generic term to include U.S. municipal court judges where applicable.

to which magistrates are exposed when they are unable to avoid sending chronic offenders to jail. This has been expressed graphically by an American municipal court judge of long experience:

In this environment, we have been driven to extreme frustrations, in part because we have been handed the two accepted tools of criminal penalization -- the fine and the jail sentence -- to deal with what has appeared to us to be primarily a social and medical problem. We have found ourselves dissatisfied with these tools both on philosophical and practical grounds. On the one hand, we are cast in the role of the bully trampling down and further degrading those within our society who are already the weakest and most inadequate among us, ourselves frustrated by the realization that neither do we protect society by the prevention of law violations in this regard which, of course, is the basic function of all law enforcement. (2, p.5)

The generality of this conflict is to be seen in the following written conclusion from a 1959 conference of municipal court judges:

The alcoholic is a compulsive offender who should be helped by the court rather than punished ...

The municipal judge has the right, if not the duty, to inform his community that he is willing to continue to handle this health problem, but that he has not been given the tools to do the job. Until such tools are provided, a judge should not be required to incarcerate persons guilty of no offence other than their affliction with the illness of alcoholism. (1, p.90)

As these statements indicate, the current conflict in our society between the "illness" and "criminal" definitions of deviance, may become a pressing one for the magistrate who is forced to be our agent in implementing one or the other. The illness definition, of course, implies that the proscribed behaviour is non-voluntary and that the appropriate response is treatment or some form of social repair rather than punishment. The traditional criminal definition assumes that the actor freely chooses to misbehave and that punishment according to a graded scale of seriousness and culpability is a justified response. The conflict is likely to appear rather sharply in dealing with offenders whose behaviour is attributable to an addiction, since the illness definition has come to be widely accepted in this sphere.

Most magistrates are likely to subscribe in some degree to the illness definition, while being required by law in most jurisdictions to treat the drunken behaviour of the homeless alcoholic as a punishable offence. Even if the magistrate subscribes to the criminal definition, he is probably forced to recognize that the traditional claims for the appropriateness of punishment are weak where chronic drunkenness offenders are concerned. First, it is difficult to justify punishment as a means of symbolically expressing and thus reinforcing the community's abhorrence of serious misbehaviour. Public drunkenness does not stand high in the scale of proscribed acts and secular change undoubtedly has been in the direction of greater tolerance of inebriety. Second, he cannot believe that by sending the offender to jail he is protecting society by removing from circulation a dangerous criminal. Third, he cannot long maintain a belief that punishment is a deterrent for chronic offenders, although he may think that some first offenders learn a lesson. Moreover, the appropriateness of punishment is challenged by the many manifest claims of sympathy of the chronic offenders. They appear to be unfortunates who have already been punished by circumstances: lonely, homeless, without a future, perhaps old and ill. The emotional significance of being the instrument for punishing such men is expressed above in the words of the municipal court judge when he says that: "We are cast in the role of the bully, trampling down and further degrading those in our society who are already the weakest and most inadequate among us." Paradoxically, the main justification available to magistrates is that punishment by incarceration is, in fact, a form of kindness since it gives the men a chance to recuperate and, perhaps, that it furnishes them with food and shelter during the cold months.

However, the dissatisfaction of magistrates with this role is not due solely to the anomalies of punishing down-and-out alcoholics. Also involved is what might be called the impoverishment of the judicial role. This has two aspects: first, the lack of intrinsic professional satisfaction provided by the activity and second, the lack of external rewards in the form of social recognition. Hearing drunk cases is a rudimentary and repetitive version of the judicial game. The job requires little by way of legal knowledge and acumen and obviously achieves little. The magistrate is rarely if ever called upon to referee the action of lawyers, to rule upon the admissibility of evidence, to study legal precedents, or weigh letters of law, or to consider professional reports on the offender that bear on sentencing.

Some of the common features of drunk trials that help to impoverish the judicial game are worth noting. The fact that the overwhelming majority of the defendants plead guilty eliminates the hearing of evidence as to guilt, the most dramatic and contentious aspect of serious criminal trials. An experienced U.S. judge, speaking of a court located in New York's Bowery, has said: "Ten years have gone by. I have yet to hear one of them ask for a lawyer. I have yet to hear one of them plead 'Not guilty'." (2.p.64) Admittedly, this is an extreme case. In the Toronto court that will be described, a few 'Not guilty' pleas are maintained but the resulting contest is usually a brief one. Generally the only witness called for the prosecution is the arresting officer and the issue reduces to weighing his assertion against that of the accused. The outcome is sufficiently predictable ("You can't beat a drunk charge.") that few of the accused make the effort. The occasional offender of a higher social status who is caught up in the net is usually willing to pay the small fine in order to escape as quickly and inconspicuously as possible.

Time-consuming weighing of the sentencing alternatives tends to be discouraged by the triviality of the offence, by the limited choices open to the magistrate, and by the apparent lesson from experience that the recidivists are not going to be changed or deterred in any event.

The number of ways that the magistrate can dispose of the case is limited not only by the law but also by the lack of facilities at the disposal of the court, particularly rehabilitative facilities that could be an alternative to imprisonment. Probation officers, scarce in relation to the demand, are not often available for the supervision of drunkenness offenders. Alcoholism clinics or social welfare

agencies dealing with this sort of man, if they exist, rarely have liaison with the courts (the Salvation Army being an honourable exception). In only a few jurisdictions is the magistrate given the option of sentencing offenders to a place of treatment.

Some of the remaining sentencing choices open by law to the magistrates may be fictitious or inapplicable, especially where chronic offenders are concerned. A fine may in theory be an alternative to a jail sentence, but it is in fact only if the offender can pay. We shall see that some 40 per cent of the first offenders in the Toronto drunk court were unable to pay their fines and that the proportion increased to 96 per cent among men up for their sixth or subsequent offence within the year. If the law allows the magistrate to give the accused time to pay his fine he is under an obligation to consent to this only where the accused is a good credit risk. Consequently, the privilege is rarely granted to chronic offenders, and usually only to those first offenders who have a job and an address. In effect, then, a fine is a jail sentence for most chronic offenders. The magistrate has little choice and therefore little reason to spend time exploring alternatives in court.

Even in jurisdictions where the magistrate is provided with alternatives to jailing, the "individualization" of sentencing is likely to be inhibited by the magistrates' genuine bafflement. He can infer from his own experience that the methods known and available to him have little success. But he has no other source of guidance. If he takes the trouble to search out literature on the subject he will find that it is generally pessimistic and provides no prognostic criteria that could be used in court. Professional assessments of individual defendants are rarely available to him since the scarce professional services are not usually allocated to such courts or such defendants. Nor are the accused likely to be able to call upon relatives, clergymen, doctors or others to give evidence on their behalf. Hence, the magistrate's information of the accused tends to be confined to the police record and what he can elicit from the accused in open court. Both the motivation and the resources for the lengthy consideration of sentencing alternatives are likely to be lacking. In a great majority of cases the standard punishment is imposed without any interchange taking place. If a magistrate occasionally breaks the routine, he is more likely to be guided by a desire to be humane than by considerations of rehabilitation.



The pressure exerted by crowded court calendars is also in the direction of the rapid handling of less important and less hopeful cases. Given the high valuation of youth in our society, it is not surprising that scarce resources are more likely to be devoted to young offenders than to older men who presumably have had their chance. The end result of these and the other forces that have been described, is a perfunctoriness in the handling of drunk cases that is epitomized in the following comment by an American municipal court judge:

Each morning before court opens, all those in custody charged with public drunkenness are seated in the courtroom in open court. They are present when the judge takes the bench and the court is formally opened. The first order of business on the court calendar is the hearing, individually, of each of these cases. The number of such cases to be heard each day varies from a dozen to one hundred and fifty. Most plead guilty. The time that may be allotted to each of these cases by the Court if the docket is to be cleared is about forty-five seconds each (2, p. 39).

Not only is the hearing of drunk cases unrewarding in itself, but it also carries with it very little social recognition as compared with other judicial roles. It is clearly one of the least esteemed duties of courts that are at the bottom of the judicial hierarchy. Furthermore, even exceptionally good (or bad) performances are likely to go unnoticed by others. Drunk trials are marked to an unusual degree by the absence of persons whose judgments might matter to the magistrate and by the almost total lack of any communication with a significant audience outside the courtroom.

Magistrates, like other professionals, are undoubtedly particularly sensitive to judgments rendered by their own colleagues, that is, by other magistrates and lawyers. Drunk trials are so rarely publicized or talked about, and lawyers so infrequently appear in these cases, that the magistrate is unlikely to establish a reputation among his colleagues on the basis of his handling of drunk cases. Moreover, the type of lay audience attracted to such courts is likely to provide the magistrate with little opportunity for immediate gratification. And the general public is likely to remain unaware of the magistrate's activities, as newspaper reporters are rarely attracted to drunk trials.

With this opinion vacuum goes an absence of relational rewards for the magistrate. Special efforts on his part to protect the rights of the accused or to find non-punitive solutions are likely to go unrecognized. The other side of the coin is that there are few social controls over the magistrate who ignores legal rules or is highly capricious or unusually punitive. Since, in addition, appeals to higher courts are almost unknown, checks on judicial behaviour at this level are minimal. This is not always disadvantageous for the accused. As we shall see, it allows magistrates who are so inclined to ignore the letter of the law in interests of leniency or substantive justice. But a larger consequence of this unintentional veil of secrecy is that it tends to keep the public ignorant of the nature and extent of the revolving door problem. If wide publicity were given to the proceedings in drunk courts, value-conflicts would be brought into the open and this would probably lead to demands for reforms.

The extent of individual magistrate's dissatisfaction with the role of the court in drunk cases is, of course, affected by the part that such cases play in his official duties. Some American municipal court judges appear to be at one extreme in that drunk cases make up a very large part of their work on the bench day after day. As a result, some of them have been moved to take the initiative in starting court clinics and other experiments, as well as organizing and participating in conferences on the alcoholic offender.

Canadian magistrates, on the other hand, are unlikely to be as ego-involved, since drunk trials are usually a small and relatively unimportant part of their professional lives. The jurisdiction of the Canadian magistrate encompasses, either absolutely or by election of the accused, the hearing of serious offences to a degree unusual for lower courts; over 90 per cent of the indictable offences in Canada are tried at this level. In the few cities where drunk cases are numerous enough to occupy most of the time of one court, the duty is usually rotated between magistrates. Thus, the dissatisfaction engendered by the hearing of drunk cases tends to be offset by other, more rewarding duties. If Canadian magistrates meet to consider common problems, as they do annually in Ontario, the revolving door phenomenon is not likely to be a major concern.

In addition, the interest of Ontario magistrates in doing something about this problem seems to be attenuated by the fact that historical circumstances have placed the responsibility elsewhere.

When the Ontario Department of Reform Institutions opened the Alex G. Brown Memorial Clinic for the treatment of incarcerated alcoholics in 1945, the need for magistrates to take the initiative was diminished. Subsequently, the development of the Alcoholism and Drug Addiction Research Foundation of Ontario, a government agency engaged in treatment, decreased further the pressure for action by other groups. And, finally, the 1961 amendment to the Liquor Control Act, discussed later in this chapter, has lessened the value-conflict by making it possible for magistrates to send offenders for treatment.

THE TORONTO COURT: A CASE STUDY

An Observer's Impressions

A description of a day's proceedings in Toronto's G Court, the special court which hears the male public intoxication cases occurring in the city of Toronto, may lend some immediacy to the more abstract analysis of the operation of this court that follows. The impressions are those of an outside observer with no previous experience of a drunk court and no more than the average layman's knowledge of the revolving door problem. Such an observer, it was felt, might see and report things that a person more familiar with the court would take for granted. The account has been abridged and edited to avoid the repetition of the many routine cases that resemble each other closely:

Following the directions I had been given, I found a modern building with a sign indicating that it was a police station. Since there was no sign inside to show where the court was located, I went up to the police sergeant at the reception desk to make inquiries. He wanted to know whether I was on bail or whether I was appearing for anybody. When I told him that I just wished to attend a session of that court, he gave me the necessary directions and I crossed through a room with barred windows in which a few people were sitting waiting. I entered a huge room in the centre of which stood a large locked cage with individual cells along one side. A din of voices rose from this cage. "Our bullpen," an officer informed me on seeing my startled glance.

Behind the iron bars of the cage some men were talking, some smoking, others pacing up and down, while still others had flopped down on the benches. A coffee dealer was selling them coffee and cake, which he handed in through the bars. I went on past the bullpen into a small office containing a couple of desks and a telephone, where I met the police officer handling the prosecution. He showed surprise at my interest in attending this court as only very seldom, apparently, does a member of the public turn up to watch. The officer then took me into the adjoining court room.

The furnishings were simple. The magistrate's bench was a desk on a platform; two desks for the court clerks stood below and to the right was the witness box. On the floor of the courtroom was the moveable stand in which the accused appeared. Two benches, one along each wall, faced the court. Two desks along the side completed the picture.

Seated at these desks were a Salvation Army major and a United Church minister, who told me about their work here. They said they came in the mornings to make telephone calls, when requested, to the family or friends of an arrested man to let them know where he was and perhaps to ask them to bring money down to the court to pay the fine, thus saving the man from jail. Sometimes these two ministers themselves loaned a man the amount of the fine. If there were any extenuating circumstances regarding a person's case which have been brought to their attention, they might submit them to the magistrate.

The two clerks were busy sorting what I was informed were the information sheets, according to the order of the names on the court calendar - which showed 59 cases for that day. Suddenly one clerk called; "Attention, please. Everybody rise." The magistrate entered the court room; the clerk announced that this court was in session in the name of the Queen; we were allowed to sit; and the police officer for the prosecution, after receiving a nod from the magistrate, called through the door to the bullpen the first name on page one of the court calendar. It was now 9:20.

The first 2 cases were remands from the day before. The case of the first remanded prisoner was called and the clerk, after charging him, said that he had pleaded not guilty yesterday and asked how he pleaded today. "Not guilty" was the prompt answer. The arresting officer was called and sworn in. He testified that on Thursday about 8:30 p.m. at a certain corner near a hotel, he observed the accused man, who was unsteady on his feet. He walked over to him and told him to move on and go home; whereupon the accused, using foul language, told him to "bugger off" and mind his own business and that he could stay where he liked. The officer

continued that he noticed a strong smell of an alcoholic beverage, that the man's speech was slurred and his eyes glassy. "In my opinion this man was drunk and I arrested him and took him to Number 4 Station." His Worship then turned to the accused and said, "You have heard what the officer has said: have you any questions to ask the officer?" The man immediately started a speech telling the officer that he was not drunk and never used any foul language. His Worship pointed out that right now he was only permitted to ask the officer any questions he had and that later he could go into the witness box and tell his own story.

The man said that he had no questions and then went into the witness box and was sworn in by the clerk. He testified that he was an epileptic; that his walk was always a bit unsteady; that he took his pills; that he had drunk only one pint of beer that evening; that he was always polite to everybody; that he did not use any foul language; that he was tired when the officer approached him and that his appearance and dizziness were a result of his using these pills. His Worship found the accused guilty. He stated that he believed the experienced officer, who has observed many drunks during his service; that pills and liquor don't mix and the question was not how much the accused had drunk but how much a person could stand and that under the circumstances even one pint of beer had been too much for the accused - who was fined \$10 plus \$5 costs or 5 days.

In the second remand case the evidence given by the arresting officer was slightly different. He did not state that any foul language had been used by the accused. However, he had observed the accused staggering on the sidewalk; there was a smell of alcohol; his eyes were glassy and his speech was heavy. This man asked the officer whether he had resisted in any way when he was asked to follow the officer to the station. The officer answered that he followed him right away and that he cooperated politely. The man then asked whether he heard him ask the officer at the station for a breathalyzer test and whether it was right that the officer had refused to give the test to him and whether

the officer told him that the police decided who was drunk. The officer answered "yes" to all these questions. The man then testified on his own behalf that he had not been drunk by any means; had worked late; had had one ounce of whiskey and that he was tired and overworked and had tripped over something on the sidewalk. The magistrate found him guilty as charged on the grounds, once again, that he believed the evidence of the experienced officer, and he stressed that the police were not required to give the requested test. He fined the accused \$10 plus \$5 costs or 5 days.

The first of the new cases shuffled in, bleary-eyed and disheveled. The clerk told him that he was charged with being drunk and asked him how he pleaded - guilty or not guilty. The man murmured "guilty", whereupon the clerk asked him whether this was his fifth offence for drunkenness within the last 12 months. On his admission that it was, the magistrate sentenced him to \$50 or one month in jail. The prisoner returned to the bullpen, where he was heard to call out "one month" to the men lined up by the door to the courtroom.

The second defendant on the list had already been brought in and the clerk repeated the charge and the query as to how he pleaded. "Guilty" was the answer. "It's his first offence, Your Worship". "Ten dollars or 5 days, young man", said His Worship. The young man said he could not pay his fine and was directed back to the bullpen while the third defendant entered the room. The same procedure was repeated; the man pleaded "guilty", admitted to his fourth offence and was sentenced to \$25 or one month.

Several first offenders followed, one after the other, each pleading guilty and being fined \$10 or 5 days. They paid their fines to the cashier in the next room and left the station. One of them was a young, well-dressed student, who told the magistrate that he was sorry, that he did not make any disturbance, and that he was rather short of money. "Ten dollars or 5 days", replied His Worship. "That is the best I can do for you. You have to pay for your education." Another one said that he had only \$8 on him. "We'll make it \$8 or 5 days", and His Worship told the clerk to alter his sentence accordingly. And so it went on.

Here was a ninth offender, a 42-year-old man (the ages were given on the court calendar) who looked 60, in a crumpled and torn suit. The last time he had been in this court was at the end of August when he received a 2-month sentence. When he was asked for his plea he said that he had just come out of the Don Jail a few days ago; that he had not been drunk at all; that he had had only a few drinks; that the police knew him and picked him up every time they saw him regardless of whether he was drunk or sober. "Come on, George", said the magistrate. "You know better than that. The police have more to do than to wait for you. You wouldn't be before me if you hadn't been drunk. Don't waste our time. How do you plead?" "Guilty, Your Worship." "Fifty dollars or two months", was the magistrate's decision.

Another man, when asked whether this was his eighth offence excitedly disputed his record and said that they must have mixed him up with another man. The prosecuting officer replied, "Come on, you have been here before. I know you." His Worship turned to the accused and asked him, "How many times would you say you have been here?" "Three or four times", was the reply. "Well, we'll settle for three this time. You know our doors are always wide open." He was fined \$15 or 10 days.

An old man, aged 69, entered. He was shivering; his suit had large rips in it; he looked sick and emaciated. It was his fifth offence. In a weak voice he told the magistrate he could hardly walk and that he had no place to stay. "Could you make it three months?" he asked. "Three months", was the answer. "We always try to accommodate our customers."

An old age pensioner, aged 76, entered, supporting himself on a cane. He pleaded guilty but said he had had only two beers and that he was unsteady on his feet as he suffered from a bad right leg. The officer asked his age and whether he had been in this court before. "Never in my life." "Do you think you could stay away from here for another 76 years?" asked the officer. Everybody smiled. "Suspended sentence", said His Worship, who asked the old gentleman whether he could manage to get home alright.

A young man, aged 21, a bit cocky to cover up his embarrassment, entered the box with his hands in his pockets. "Take your hands out of your pockets", said the clerk. He pleaded guilty and His Worship spoke to him severely, "Have you seen these fellows out there?" (pointing to the bullpen) The boy nodded. "Do you want to become one of them? They are not old men, that is what liquor did for them. You'd better smarten up fast. "Ten dollars or 5 days."

A new Canadian, Italian, followed. When asked how he pleaded he shook his head and said, "Me no English", and the prosecuting officer tried to communicate with him by sign language. "Vino", he said, making with his hands the movement of lifting a glass to his lips. The prisoner nodded and the officer asked, "How many?" using his fingers. The prisoner nodded again when he saw 2 fingers. Now the officer asked him whether he was "zigzagging", demonstrating a wavering movement with his hand. The prisoner shook his head in disagreement. The officer told the magistrate that he thought the fellow was holding some money in his hand. "Ten dollars or 5 days". The officer showed his 10 fingers to the man who waved the \$10 bill clutched in his hand.

Another man, when asked for his plea, said that he had drunk only 4 glasses of beer, that he was used to drinking and that he had not been drunk. He was told by His Worship that he had to plead before he could give his story; that if he pleaded not guilty the arresting officer had to be called to give evidence and that his case would have to be remanded until tomorrow and bail would be set at \$25 cash. He pleaded not guilty and was remanded accordingly. The Salvation Army major leaned over to me. "That fool. I told him to plead guilty and to get it over with. He has a good job and he'll just lose another day without any further success."

Then there was the first offender who had been fined \$10 or 5 days who asked for time to pay. The magistrate inquired about his address, which he gave. The clerk interrupted and said that he had given "no home" to the police when he was arrested. The man said that

he was drunk at the time and did not remember what he had told the police. His Worship continued to ask him whether he worked and he answered that he had been laid off 4 weeks ago and received unemployment insurance pay which was due the next day, whereupon he was told by both the police officer and the magistrate that unemployment insurance payments were not meant to be used for drinking or for payments of fines. The man then asked whether he could give a cheque and was told to make his arrangements outside. This meant, I was told, that he would have to ask the Salvation Army officer to make a telephone call for him after court to find out whether any of his relatives or friends would come and bring the money for him.

Another story was that of a tenth offender who asked the magistrate for a break. "What have you done to deserve a break?" retorted the magistrate. "Well, sir, I have been in jail practically all the time" was the answer. "Whose fault is that?" enquired the magistrate - and the prisoner meekly admitted, "Mine". "Show me his record", said His Worship to the clerk, who handed it over to him. His Worship went through the record and finally said, "I'll give you a break this time, but if you come back again I'll throw the book at you, you understand." "Yes, Your Worship, thank you very much." "Suspended sentence" was the verdict.

An elderly Indian in his fifties was brought in. He was a quiet, polite man with an alert expression. He pleaded guilty and, as it was his fifth offence the magistrate asked him whether he would like to "take the cure". The man told him that he was sorry, he would like to take the cure but that as a matter of fact he had had it before but they had found out he could not take the pills due to a heart condition. The sentence was \$25 or 30 days.

In the case of a fourth offender, the Salvation Army major interceded by telling the court that this man had a long drinking record, that he had become a member of the Harbour Light, had conducted himself very well for the last four months but had slipped yesterday when meeting one of his old pals and that they were willing to take him back at the Harbour Light. His Worship thanked the major for his assistance, gave a suspended sentence and told the accused, "We are all here to help you and you should try hard to carry on the good work."

After the last case was handled the magistrate told the officer to find out whether anybody wanted to change his plea. One of the few men who had been remanded on a "not guilty" plea was brought back into the courtroom and asked by the clerk, "You want to change your plea?" The man hedged, "Well, I was not really drunk; I had only a couple of beers." His Worship told him nobody was forcing him to change his plea and that he himself had to know and to decide how to plead. Whereupon the man replied, "Alright, what can I do? I plead 'guilty'." I can't lose another day." Ten dollars or 5 days was the verdict and the man paid.

Court was officially adjourned until Monday at 9:00 a.m. I looked at my watch and could hardly believe that it was only 10 minutes past 10 o'clock. Only 50 minutes had passed since the court had commenced. During this short period we had participated in the lives and problems of 59 individuals from many walks of life: the young and the old, married and single, working and unemployed - of various nationalities - some with homes and families, others living in a room or a hostel and some with no home at all.

The Setting and the Participants

The sparse utility of the physical setting of G Court has been adequately described in the preceding section. It bespeaks both efficiency and the lack of outside interest in the proceedings. The small courtroom was (and still is, at the time of writing) located in the police station of a downtown division that includes the main Skid Row area and, during the period of the study, could only be reached by passing the adjoining cell block. It was furnished with steel office furniture and the walls were finished in the type of tile commonly used in bathrooms. Two small benches in a corner of the room provided the only seating for spectators, witnesses, lawyers, and anybody else who might be attending. The dock was a small portable steel railing placed a few paces from the door through which the defendant came when called by the prosecutor. At the front of the court was another door through which the defendants left the court. It gave way to a small room where, during the court sitting, a clerk was stationed behind a table to collect fines.

The regular cast of actors within the courtroom consisted of a magistrate, two clerks of the Court, a policeman-prosecutor, the accused, representatives of the Salvation Army and the United Church of Canada, and the observer for this Study. Other participants, with the exception of the accused, were few. Lawyers appeared for only 16 defendants during the year. Very occasionally relatives or friends of the accused appeared, usually to give grounds for leniency or ask for some special disposition of the case: wives appeared in 15 cases, other relatives in 13 cases, friends in 13 cases, clergymen in 7 cases, fellow A.A. members in 2 cases, and a representative of the Canadian Legion in one case. The arresting officers came to testify for the prosecution in 292 cases. A newspaper reporter turned up on one occasion - a day when a world-famous visitor to the city, who had been abusive as well as very drunk, was to appear. Otherwise, the presence of spectators who had no part in the proceedings was almost unknown.

The role of the police officer who acted as prosecutor and the two religious representatives requires a brief description since they are not commonly found in other types of courts. The policeman-prosecutor had an unusually influential part in the proceedings because of his extensive acquaintance with the large population of "regulars". For several years he had prosecuted on each court day, except on the one day a week when he was relieved by an assistant. In addition, he was in charge of assembling the information sheets on the past convictions of each defendant for the clerk of the court, and saw that the men were lined up outside the door of the court in the order of their appearance on the court calendar. The magistrates, who rotated duty in the court, were often dependent on the prosecutor's knowledge of the defendants, especially when the identity or record of the accused was in dispute. Sometimes this officer took the initiative in identifying one of the accused as a "regular" who was trying to get by as a first offender by using an alias - a ruse that undoubtedly would have been tried much more often if recognition by the prosecutor had not been so likely. In a few cases he influenced the verdict by asking a defendant a question that would bring some relevant quality of the accused to the attention of the Bench. The most frequent example was his asking old men

their ages, a claim for leniency generally recognized by the Bench if it was not coupled with a recent record of recidivism. Magistrates, on a few occasions, openly consulted the sergeant about the advisability of a particular sentence for a specific offender. As no probation officer was attached to this court, the policeman-prosecutor was usually the only available source of knowledge and advice.

The two religious representatives provided the only counsel and help immediately available to most of the prisoners. When they visited the defendants in the cells prior to the opening of court to offer their services, the favour most frequently asked of them was to contact the prisoner's family, friend, or employer to inform them of his plight and to ask them to bring money to court to pay his fine. They sometimes cashed cheques for prisoners and occasionally loaned them the money to pay their fines. If asked, they told the prisoners how to conduct themselves in court, e.g. to plead guilty to avoid further delay and because the chance of acquittal was so small, and what kind of sentence to expect. In court, they interceded for the occasional defendant, telling of extenuating circumstances or of special hardships that would result from a jail term. The fact that they used the privilege sparingly helped to maintain their influence with the court. The Salvation Army major spoke up in 70 cases throughout the year and the United Church minister in 35 cases. Nobody interceded for the accused in the vast majority of cases.

Rapid Trial

The average time per case for the 7 magistrates who sat in G Court for at least 10 days during the year of observation ranged from 43.5 seconds to 59.8 seconds. Since this figure was arrived at by dividing the duration of the court sessions by the number of defendants, it includes the time consumed in bringing the man to the dock and ushering him out, as well as the clerk's reading of the charge, the defendant's plea, the clerk's reading of record of convictions and the magistrate's pronouncement of the sentence - as well as the more extended time taken in the few not guilty pleas.

In 96.2 per cent of the cases the accused cooperated by pleading guilty immediately. Moreover, less than half of the remainder actually went to trial. Of the 665 defendants (in the total court population) who were heard by the observer to say, "not guilty" - some in a low murmur - 82 either were not heard or were not taken seriously by the Court, which proceeded to dispose of them as if a guilty plea had been entered. The remainder were usually given at least two opportunities to change their minds. After the last case was heard each day, the police officer generally went out to the cells where the men were awaiting transportation to the jail and asked if anybody wanted to change his plea to ~~not~~ guilty. During the year 165 of the 583 who were eligible took advantage of this opportunity and returned to the court for sentencing. When the defendants with not guilty pleas reappeared on remand a couple of days later they were again asked if they wanted to change their pleas and 95 of them did so. Since some of the men on bail failed to appear on remand, only 304 of the original not guilty pleas actually went to trial. Of these, 12 were dismissed without a hearing when the arresting officer failed to appear, leaving only 292 cases in which testimony as to guilt was heard.

The predominance of guilty pleas reflected, among other things, the defendants' beliefs about the futility of fighting the charge. The phrase, "You can't beat a drunk charge" was common coinage in Skid Row and undoubtedly was communicated to some of the first offenders while they waited in the cells. The G Court statistics show that there was a real basis for the belief. Of the 292 cases in which testimony as to guilt was heard, only 22 were dismissed and in several of these there were unusual extenuating circumstances. Thus, the probability of the word of the accused being accepted over that of the arresting officer was no greater than 1 in 13. Not only were the chances of winning low, but it was also widely believed by the "regulars" that the Court would give a stiffer penalty than for a guilty plea. In addition, the majority could not put up bail and knew that they would have to pay for the gratification of fighting the charge with a couple of extra days in jail.

Once the defendant had waived trial by pleading guilty, the clerk of the court read the defendant's record, the magistrate pronounced sentence, and the hearing was over. The few delays that occurred were either disputes over the identity or extent of the record (initiated by the accused), pleas for leniency on the part of the

accused, answers to questions put to him by the prosecutor or the judge, or pleas by relatives or friends for special treatment of the defendant. These colloquies were rare and usually brief - as the very short average length of hearing indicates.

After the question of guilt had been disposed of, the clerk of the court, on the basis of the information sheets prepared for him by the policeman-prosecutor, asked the accused to confirm that this was his second, third, or whatever, conviction within the last twelve months - the procedure laid down in Section 135 of the Liquor Control Act. If the accused disputed the record, the clerk then proceeded to read the dates, sentences, and other particulars from the attached previous information sheets, which, according to the Act (Section 135) constitute prima facie proof of previous convictions. If the accused contended that this was somebody else's record, the spelling of his name, address, his occupation and other details were compared with the information sheets or the policeman-prosecutor stated that he recognized the accused and this settled the matter.

Less uncommon than these disputes over identification, were protests by the accused that his convictions were fewer than alleged. When this occurred, the magistrate not infrequently asked the accused which offence he thought the current one should be. If the dispute involved a small number of convictions, usually between 2 and 4, the magistrate either accepted the defendant's statement, or where there was a total absence of discrepancies in the informations, the defendant was informed that if he persisted in his claim the case would have to be remanded and the arresting officers called to prove the previous convictions. This usually served to silence even the most vehement protestations. Where the dispute involved a record of five or more convictions the magistrate simply informed the accused that an error of a few convictions one way or the other would not affect the outcome.

Once the defendant had pleaded guilty and his record had been confirmed, he or witnesses on his behalf could speak further only with the permission of the magistrate. Relatives and friends, as they had taken the trouble to come to court (this did not happen often enough to interfere significantly with the court routines), were usually given a chance to speak. But the likelihood of the defendant who tried to tell his story being allowed to go on with it seemed to vary from day-to-day and from magistrate-to-magistrate. In some cases the defendant's

story, following a guilty plea, was that he was really not guilty, that he had drunk only one or two glasses of beer, or that he had taken medication or had a chronic illness that created the appearance of drunkenness. Such pleas were generally cut short with a reminder that he had already pleaded guilty. More commonly, the defendant did not deny drunkenness but alleged misfortune or suffering as an excuse for drinking or claimed that a jail sentence would cause him to lose a job, a room, or to suffer some other hardship. The defendant usually spoke briefly - often he uttered no more than one sentence and if he showed signs of launching into a protracted explanation he was usually cut off. In short, defendants who had pleaded guilty were sometimes allowed to speak on their own behalf but they were rarely invited or encouraged to do so.

Several practices had developed in G Court which helped to expedite the proceedings. One of these was the truncation of the reading of the charge by the clerk of the court, a ritual that followed immediately the appearance of the accused in the dock. If the substance of the information had been read in full, as appears to be required by Section 708 of the Criminal Code (which is made to apply, mutatis mutandis, to proceedings under the Liquor Control Act by the Ontario Summary Convictions Act, Revised Statutes of Ontario 1960, Chapter 387), it would have cited the law which the defendant was alleged to have broken and the date, time, and place of the alleged offence. The practice in G Court was to shorten the ritual. On only 5.2 per cent of the court days in the year of observation were all these items included in the reading. On 56.1 per cent of the court days the clerk stated: "You are charged with being drunk in a public place" without details of the specific offence, and on 38.7 per cent of the court days the clerk simply said: "You are charged with being drunk". It was found that certain magistrates had instructed the clerk to use this last shorter form on the grounds that the term "public place" only confused the defendants, some of whom did not realize that a street came within the meaning of the term.

The time of the court was also saved by the development of informal standards of eligibility for time to pay fines. These became known to the habitués of the court who, as a consequence, usually did not bother asking. On some court days the policeman-prosecutor, either on his own initiative or at the request of the magistrate, intentionally forestalled futile requests by informing the defendants waiting in the cells that only first offenders could hope to get time to pay. ✓

Essential to the speedy handling of cases was the development by each magistrate of a more or less standard scale of punishments using as criteria easily ascertainable characteristics of the defendants. This is discussed below in the section on sentencing.

The interests of a variety of officials and organizations had become geared to this system of quick trials and many adjustments would have had to be made if the Court had started to protract the hearing unduly. The court clerks and the policemen involved all had other tasks that they **were** expected to do in the afternoon, as did the magistrate. The police wagon was waiting to take the offenders who had not paid fines to the Don Jail and at the jail the intake staff was waiting to process the "fish". Indeed, the police station **had** no means of feeding the men should the proceedings have extended beyond the lunch hour.

An observer had an opportunity to witness what happened when a magistrate who began serving in this court for the first time took an unprecedented length of time inquiring into each case. Although he was immune to open criticism by virtue of his office, the court officials involved expressed strong discontent among themselves about the inconvenience he was causing. Gradually he became socialized into the new role and fell into the customary methods of disposing of cases with dispatch. We do not know to what extent he became aware of the disapproval he was evoking and was influenced by this. A growing feeling of futility based on greater familiarity with the revolving door pattern may have been enough in itself to cause him to lose his zeal.

Sentencing Practices

The Ontario Liquor Control Act, which formally limits the magistrates' range of choice in deciding the penalty, divides the year of observation into two periods because of the changes in the Act that came into force on January 20, 1961. The former law, in force at the beginning of observations on November 1, 1960, stipulated for a first offence a fine of \$10 to \$50 or up to 30 days imprisonment in default of immediate payment; for a second offence, a fine of \$50 to \$100 or from one to two months imprisonment in default of immediate payment; for a third or subsequent offence imprisonment of 3 to 6 months without option of a fine. The new penalty clauses that formally governed the court from January 20, 1961 to the end of observations on October 31, 1961, provided for a fine of not **more** than \$50, without reference to the number of offences and gave the magistrate the power to commit an offender on a third or subsequent conviction

within 12 months, to "an institution for the reclamation of alcoholics" for 30 days, or any offender to 90 days in such an institution with his consent. Thus, the fines for repeaters were reduced, the mandatory term for the third offence was eliminated, the right to give offenders time to pay their fines was now apparently introduced by the elimination of the words, "in default of immediate payment" and the right to commit an offender for treatment was introduced for the first time. The treatment provision did not come into effect until May, 1961, when a new cell block at Mimico Reformatory was converted into an annex of the Alex G. Brown Memorial Clinic and was proclaimed as "an institution for the reclamation of alcoholics" under the Act. The discussion that follows will be simplified if we refer to the study interval prior to the change in law as Period I, and the study interval from January 20, 1961 onward as Period 2.

Non-Statutory Sentences

Although the law became less punitive, the change had only a small effect on the actual penalties meted out in G Court, since in practice the magistrates had already become much more lenient than the statute required. The majority of multiple offenders in Period I were given sentences that for want of a better term we may call "non-statutory". All but one of the second offenders (in the 1 in 5 sample) in Period I were fined less than the \$50 minimum set by the statute. Only 24 per cent of the defendants with 3 or more convictions were given the mandatory jail term; the others had the option of a fine. Two-thirds of the mandatory sentences were for less than the prescribed 3 months and none was for over 3 months. (Indeed, over half of the offenders with 6 or more convictions in a year were given an option of a fine and none of these fines was higher than \$50.) After the law was changed, fines that erred on the side of leniency became impossible because no minima were prescribed. In Period 2, mandatory terms, which became non-statutory, were handed down in only 0.5 per cent of the cases.

The tendency of the Court to be more lenient than the letter of the law was manifested very clearly in the awarding of suspended sentences, the means used to save from punishment offenders regarded by the Court as deserving. A nominal fine might have performed the same function for offenders who were not completely penniless but this device was almost never used. Instead, a suspended sentence was given without any conditions attached and without any intention of bringing the offender back to court for sentencing for that particular offence if he should fall from grace. The majority of these suspended sentences did not conform to the conditions for granting suspended

sentences laid down in the Ontario Summary Convictions Act which specified that the sentence could be suspended only: "Where a person is convicted of an offence for which a minimum punishment is not provided and he had not been previously convicted of any offence". Using the first criterion, all the suspended sentences given in Period I (6.5 per cent of the total sentences) were non-statutory, since the Liquor Control Act stipulated minimum penalties for public intoxication at that time. Using the second criterion, all the suspended sentences given during both periods to offenders with previous convictions were non-statutory. For the magistrate to conform to this second requirement, he would have had to be informed on police authority that the defendant had no previous offence record of any kind, instead of merely being told of the defendant's record for drunkenness convictions in that court within the previous 12 months. However, the evidence from G Court is that this information would have been irrelevant because the magistrates did not, in any event, regard a previous conviction as a bar to a suspended sentence. Approximately one-third of the suspended sentences during the year were handed down to men with more than one drunkenness conviction within 12 months. The probability of such a repeater getting a suspended sentence was only half that of a first offender but this, judging from our observation of transactions in G Court, was because he was regarded as unworthy rather than formally ineligible.

TABLE V - 1

COMPARISON OF SENTENCES IN G COURT AND SMALL CITY
BEFORE AND AFTER THE CHANGE IN LAW (Per Cent)

	G Court		Small City	
	Period 1	Period 2	Period 1	Period 2
Suspended sentence	6.5	5.7	-	-
Fine or term option	82.6	91.1	75.7	69.0
Mandatory term	9.6	0.5	13.5	18.5
Treatment	-	2.0	-	4.5
Case withdrawn	0.8	0.5	8.1	6.0
Case dismissed	0.3	0.2	2.7	1.5
(Number)	(648)	(2870)	(74)	(200)

The sentencing in the magistrates' court of Small City bore a less consistent relationship to the letter of the law. Not only were non-statutory sentences that erred on the side of leniency less common than in G Court, but a significant number of the sentences were more severe than the law decreed. In Period I, 20 per cent of the convictions for a third or subsequent offence resulted in the three-month sentence required by the statute. Second offenders were assessed the statutory fine of \$50 or more 56 per cent of the time, while 25 per cent received smaller fines. But 19 per cent of the second offenders were dealt with much more severely than the law allowed in that they were given mandatory terms of three months. Following the change in the law, 18.5 per cent of the Small City cases resulted in mandatory prison terms - over one-third of them for as long as three months, despite the elimination of this penalty from the statute. Fines exceeding the \$50 maximum were ordered in 2% of the cases. The absence of suspended sentences in Small City is offset by the larger proportion of its cases that are withdrawn or dismissed and by the informal practice, which does not show up in the Table, of withholding punishment by remanding cases for sentencing from month to month on condition of good behaviour.

Factors Influencing Sentencing

The large number of cases in the G Court sample provided an opportunity to study sentencing practices statistically. If we treat the various dispositions of cases as dependent variables, we can relate these to several independent variables which might be expected to affect the outcome. The conclusions derived from these calculations will be reported verbally to avoid a plethora of tables.

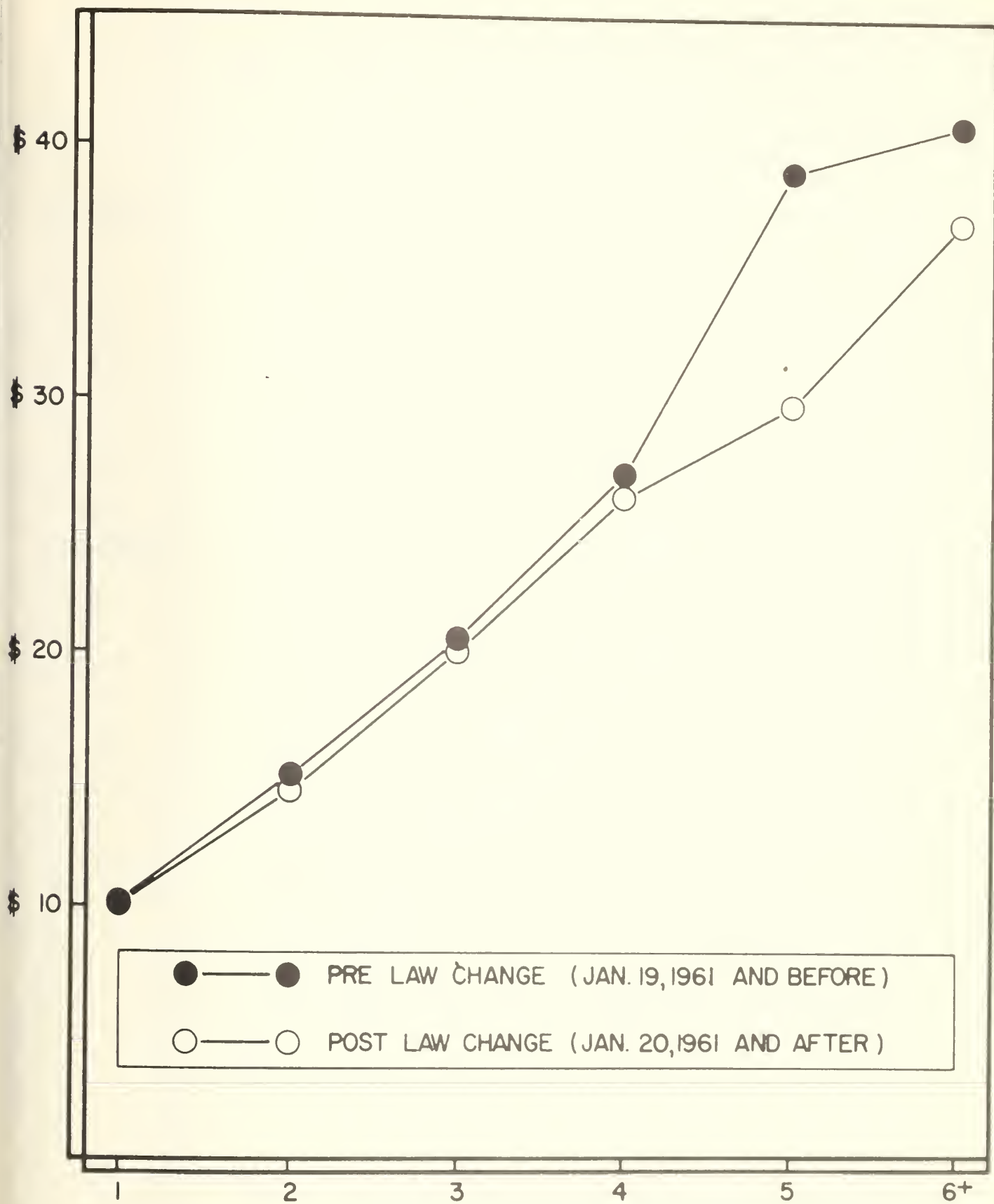
The Defendants' Previous Records. - The defendants' records of known convictions within the previous 12 months proved to be the best predictor of the type and severity of punishment decreed by each magistrate. The reliance of the magistrates on the record of offences as a criterion for sentencing is understandable. It is the standard of punishability that traditionally has been laid down in the penalty section of the statute. Moreover, it is the most easily ascertainable objective characteristic of the offenders and therefore the standard best suited to the speedy and impartial administration of justice. The clerk of the court routinely reads out the record of offences in the last 12 months after the defendant has pleaded guilty and the magistrate can, and in most cases does, pass sentence without further ado. From the summary of types of disposition and

number of offences in Table V - 2, it can be seen that the proportion of offenders given the fine or term option declined as the number of offences went up, while the proportion given mandatory prison terms or treatment increased.

TABLE V - 2
DISPOSITION OF CASES BY RECORD OF OFFENCES
IN LAST TWELVE MONTHS (Per Cent)

Disposition	Record of Offences						Total
	1	2	3	4	5	6+	
Suspended sentence	7.9	3.9	3.7	1.8	3.0	5.7	5.8
Fine or term option	91.3	94.1	91.9	89.2	86.1	78.5	89.6
Mandatory term	0.1	0.4	2.5	4.5	5.5	9.6	2.1
Treatment	0.2	1.3	1.6	3.6	4.5	6.0	1.7
Withdrawn or dismissed	0.8	0.4	0.3	1.0	1.0	0.2	0.8
Total	100.1	100.1	100.0	100.1	100.1	100.0	100.0
(Number)	(1766)	(562)	(322)	(222)	(202)	(437)	(3518)

Since almost 90 per cent of the offenders were given the fine or term option, it is the high degree of association between the severity of the two items in this disposition and the number of offences that provides the most important evidence of the influence of the record. The relationships are illustrated graphically in Figures V - 1 and V - 2. Both increased precipitately with number of offences; both before and after the change in the law. Also worth examining is the possibility that the time elapsed since the last court appearance - the interval during which the defendant apparently stayed out of trouble - had a bearing on the disposition of the case. A significant negative relationship is found to exist between the length of this interval and the severity of the sentence, but it disappears when we control for the number of offences, since the fewer the offences the farther back in time the last offence is likely to have occurred, the two variables are confounded. However, the court observer noted that the interval since the last appearance was discussed in court very rarely and interviews with magistrates verified that the number of offences was the criterion commonly used. The interval tended to be considered only when it was exceptionally long for a chronic offender and was brought to the attention of the court.



NUMBER OF OFFENCES

FIGURE V - I

AVERAGE LENGTH OF TERM LEVIED AS OPTION TO FINES

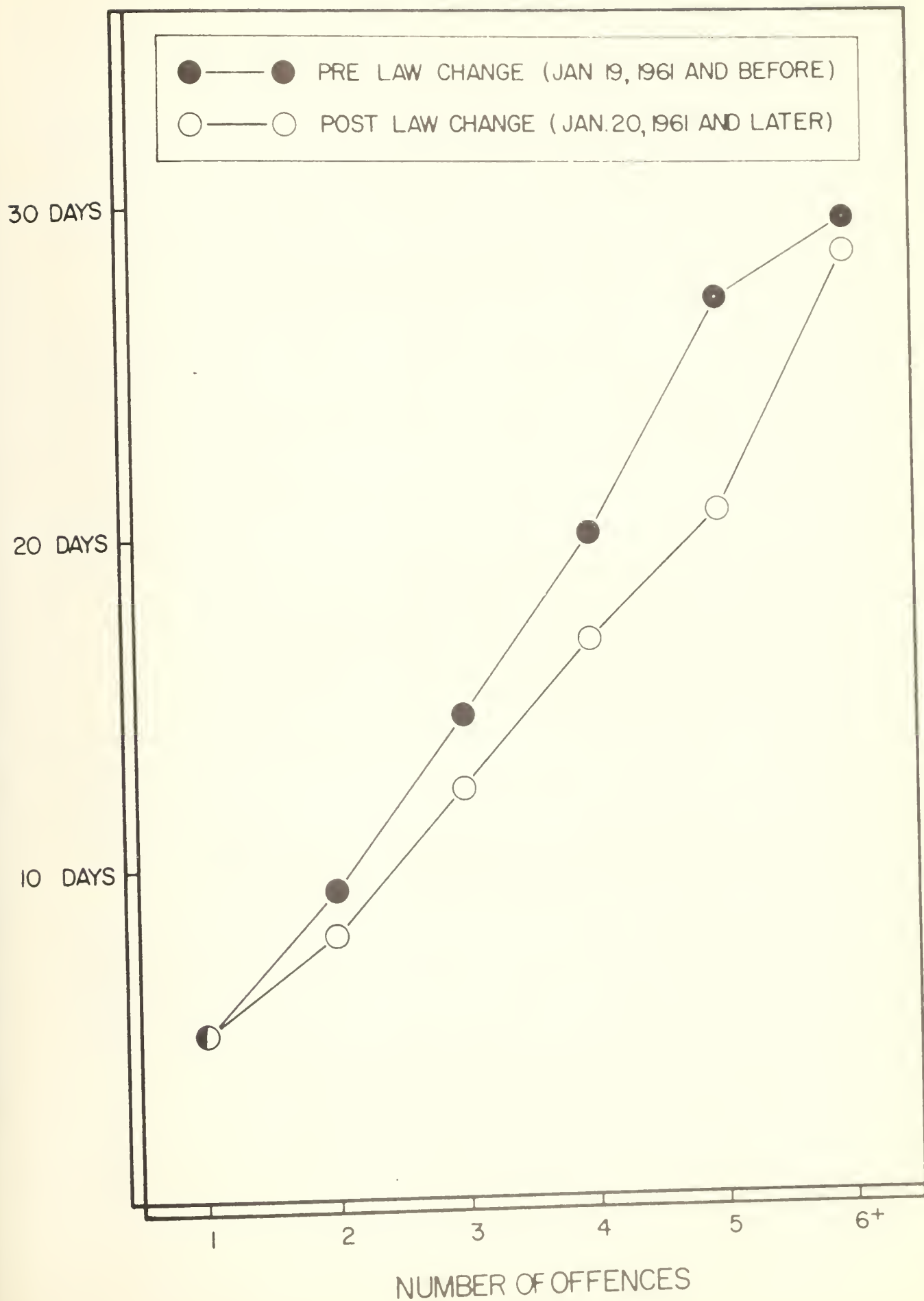


FIGURE V - 2

Age. - Did age influence the severity of the sentences meted out by the Court? We find that both the size of the fine and the length of the optional terms increased significantly with the age of the defendants, but that controlling for the number of offences eliminates the relationship. Hence, the influence of age is accounted for by the fact that recidivism increased with age.

The relationship of age and type of disposition is not as clear-cut. The only disposition category revealing significant differences due to age is "suspended sentences". The older the offender, the greater the chance that he would be given a suspended sentence. Controlling for the number of offences, before and after the change in law, we find that increasing age significantly improved the chances of getting a suspended sentence only for first offenders prior to the change in law and for first and second offenders after the change in law. When faced with more serious recidivists, the Court was unlikely to give a suspended sentence simply because the defendant was an old man.

Socio-Economic Status. - Occupational data on the sample are too unreliable to yield a measure of socio-economic status. However, the defendants can be divided into Skid Row and non-Skid Row categories on the basis of area of residence, dropping those defendants who lived in marginal areas in order to sharpen the comparison.

Although both the magnitude of the penalty and the type of disposition were significantly related to Skid Row status or its opposite, the relationship, once again, disappears when we control for number of offences. Skid Row residents were highly overrepresented among the serious recidivists and it was this record, rather than their low status, that was related to the penalties they incurred.

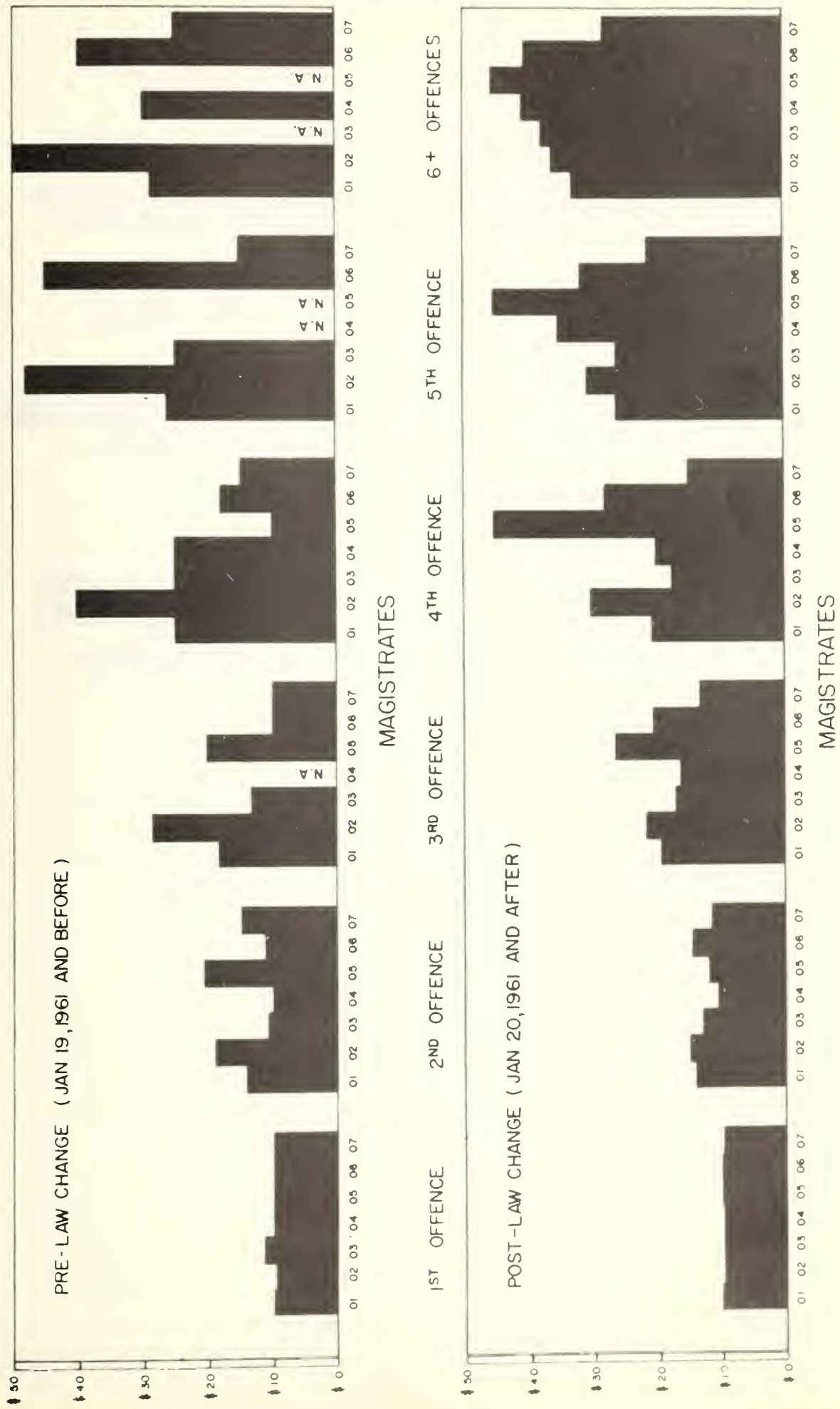


FIGURE V - 3

AVERAGE AMOUNT OF TERMS LEVIED AS OPTIONS TO FINES

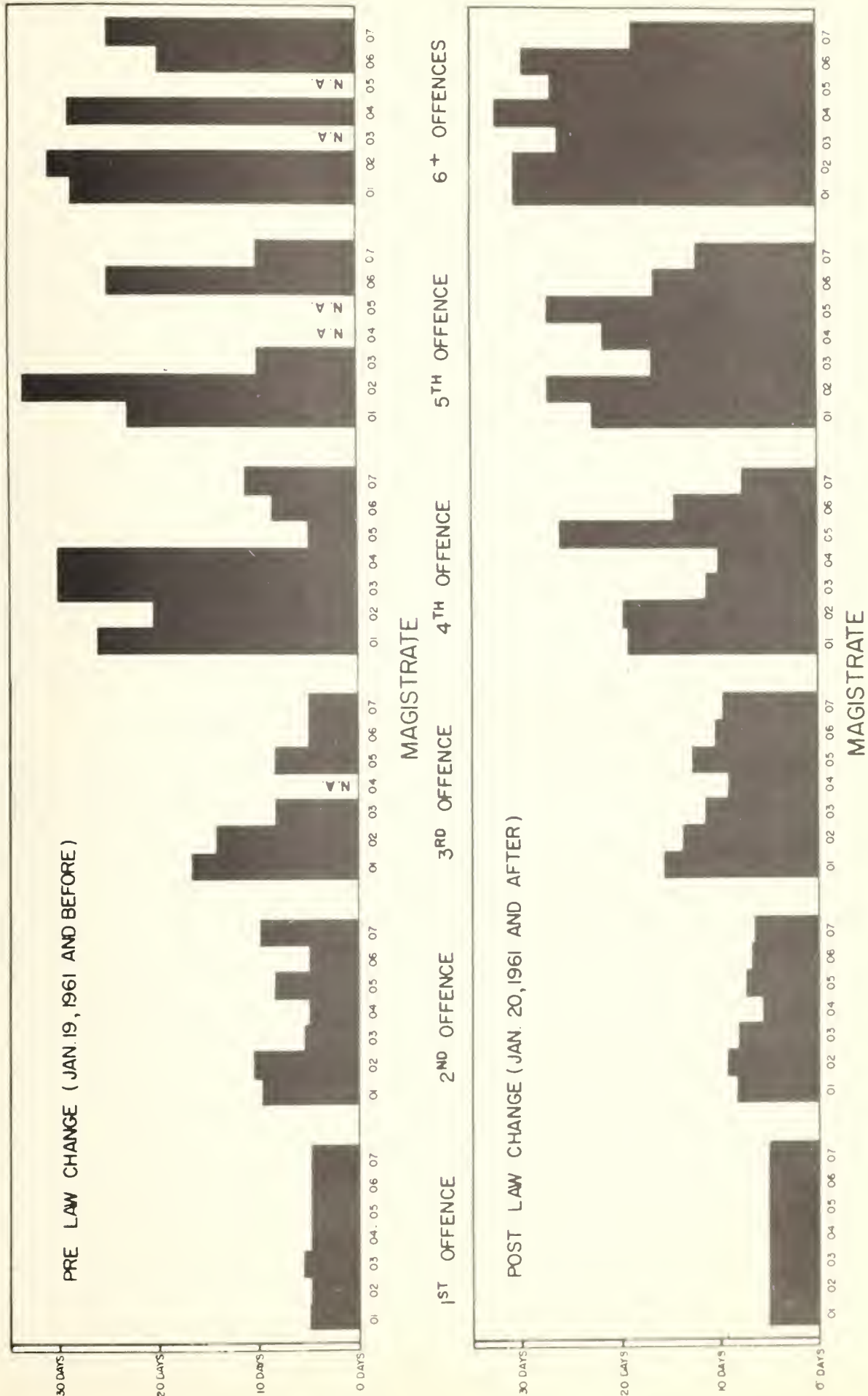


FIGURE V - 4

The Magistrate. - Did magistrates serving in the same court differ in the penalties they gave drunkenness offenders? Apparently they did. In Figures V - 3 and V - 4 the average fines and optional terms levied by the seven magistrates who sat in G Court for 10 days or longer during the year of observation are compared, broken down by the offenders' record within the previous 12 months and divided between the periods before and after the change in law. The magistrates are identified by numbers (01 to 07) in order to preserve their anonymity.

They all tended to treat first offenders similarly - a routine \$10 or 5 days. But the diversity in the average penalties given multiple offenders, whether we look at the fines or the optional jail terms, is striking. Each magistrate had his own idea of the amount of punishment appropriate for recidivists, although all increased the penalty as the number of offences went up. Moreover, they differed in the number of days of incarceration that they considered equal to a given fine, as can be seen by comparing values for individual magistrates in Figures V - 4 and V - 5. For the offender, the per diem cost of freedom depended on which magistrate he happened to draw.

The Change in the Law. - The overall effect of the change in the law of January 20, 1961, which did away with the minimum penalties, was to decrease the average fines and optional terms, as well as almost eliminating mandatory jail sentences and leading to commitment for treatment for a few. The difference in average fines and terms was not large, as can be seen by referring back to Figures V - 1 and V - 2. However, the average is misleading as an indication of the predictability of magistrates. Figures V - 5 and V - 6 show that while some magistrates in the average decreased the penalties when the law became formally less punitive, others actually increased the penalties. As mentioned earlier, before the law changed the magistrates were generally less punitive than required by the statute; hence, the inconsistent and relatively small change after the amendment to the statute came into force. The fact that the magistrates who decreased their penalties in the second period were in court more often than those who increased them, made for an overall decrease in the average penalties. .

AVERAGE AMOUNT OF FINE LEVIED

PRE LAW CHANGE (JAN. 19, 1961 AND BEFORE)
POST LAW CHANGE (JAN. 20, 1961 AND LATER)

\$ 30

\$ 20

\$ 10

01

02

03

04

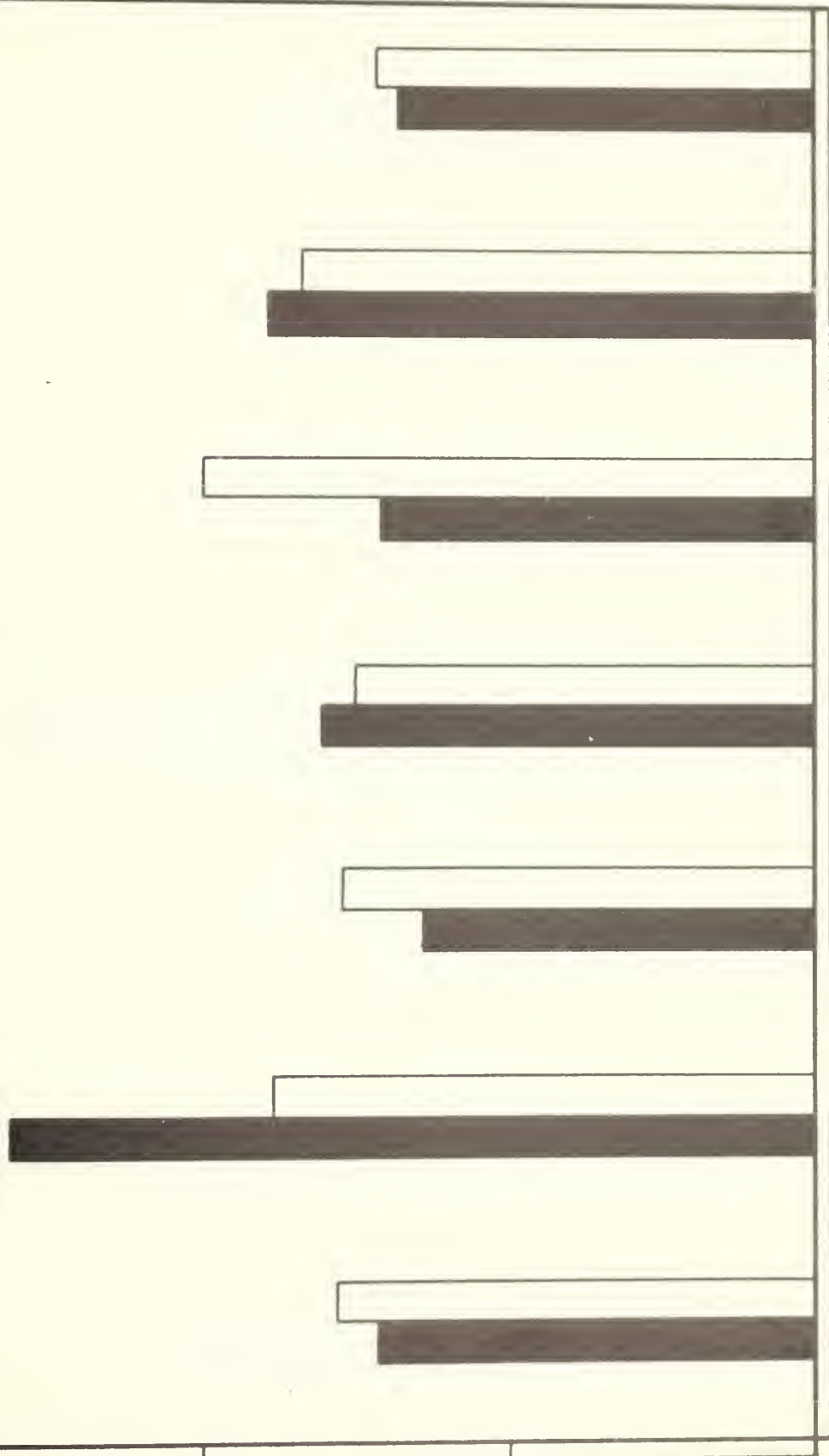
05

06

07

MAGISTRATES

FIGURE V - 5



AVERAGE LENGTH OF TERM LEVIED AS OPTION TO FINES

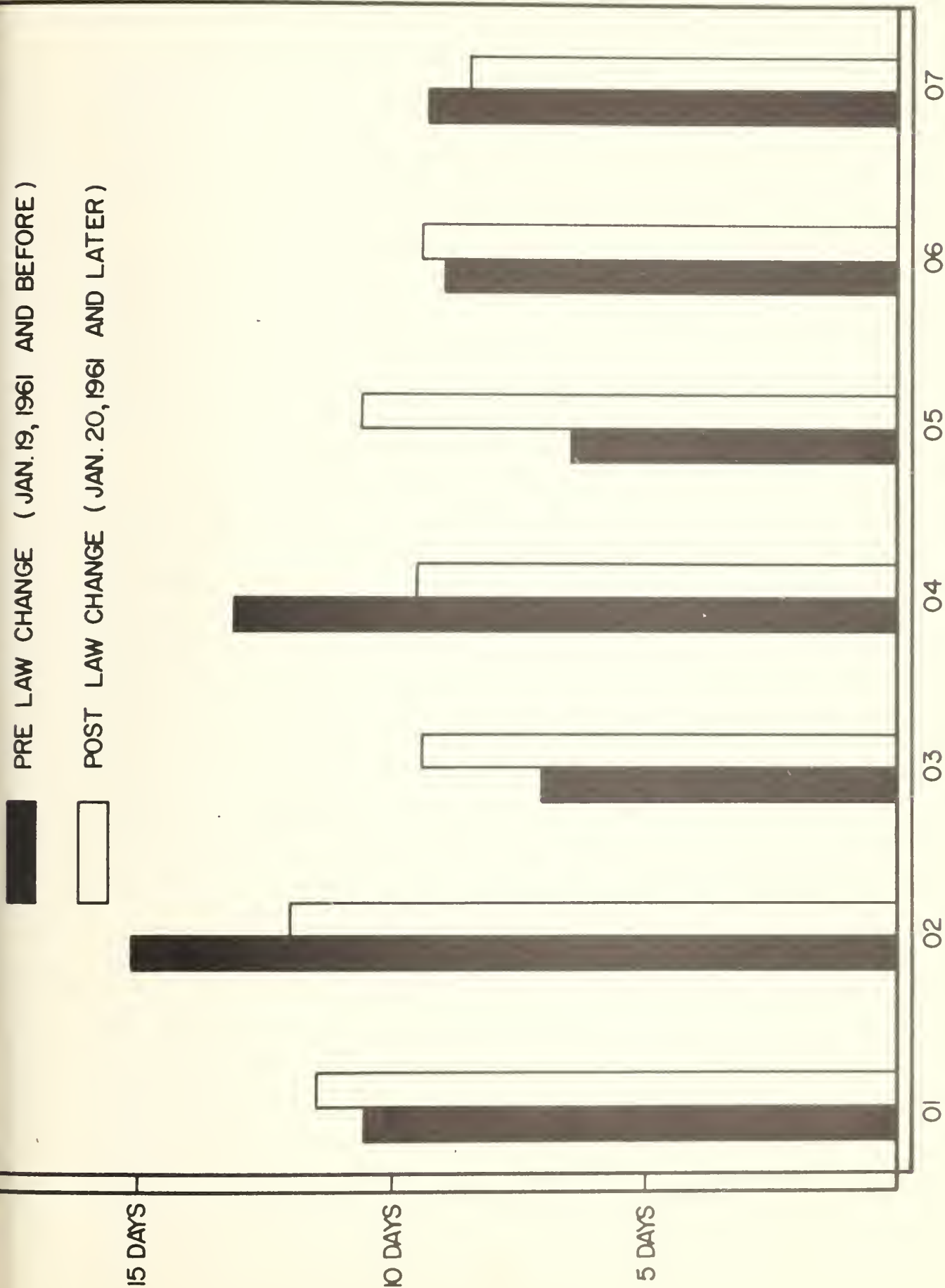


FIGURE V - 6

MAGISTRATES

Other Influences. - This analysis seems to tell us that in general each magistrate, using his own scale, tended to dispense impartial and even-handed justice, but did not go in for "the individualization of punishment". To do so in a serious way would have required much more knowledge of the defendants than was available to them under the existing system.

Nevertheless, these statistics, being heavily influenced by that great majority of cases which were handled routinely, give a somewhat misleading picture of uniformity and inflexibility. The monotonous parade through the courts was, in fact, punctuated now and again by interchanges between the parties and by atypical sentences. Pleas for leniency were occasionally put forward and some of them did lead to a disposition less severe than an offender with that number of offences would usually have drawn.

One claim for leniency - the plea for "a break" on the grounds that the petitioner had been punished relentlessly or very recently - was sufficiently common that it might be regarded as part of the informal subculture of G Court, familiar to all the experienced participants. The offender would say: "Your Worship; I haven't had a break in eight months", or "Can I have a break? I just got out yesterday", and if he was lucky he would be given a suspended sentence or treated as a first offender. Of the 399 defendants who explicitly asked for "a break" in the year of observation, 97 (24.3%) were given a suspended sentence and some - the exact number is unknown - were given a smaller fine than was usual for men with their records. The type of plea for leniency that came second in frequency, mentioned unemployment or financial hardships in some form. These pleas had small chance of success. Suspended sentences were granted in only 30 (or 9.3%) of the 321 cases in which such arguments were advanced, and most frequently those treated leniently were the first offenders among the petitioners.

The most effective grounds used in pleas for leniency were those employed rarely. Of the 28 men who argued that they were drunk only because they had been at a special celebration or reunion, 20 (or 71.4%) were given suspended sentences. Of the 105 who asserted that they were visitors to Toronto or transients passing through, 66 (or 62.9%) received suspended sentences. Another 49 defendants (other than chronic offenders asking for a "break") claimed to have been just recently released from a penitentiary or reformatory, and 30 (or 61.2%) of them were given suspended sentences. The men who put forward these pleas are obviously likely to

be in the court for the first time within a year. Less likely to be first offenders were the defendants who pleaded that they had been beaten up and (or) robbed prior to arrest. Suspended sentences were granted in 41 (or 41.4%) of the 99 cases in which this plea was made.

The defendant's chances of having a plea for leniency accepted depended not only on the grounds that he put forward and the attitudes of the individual magistrate, but also on the plausibility of his story. The observer found that the assertions of some of the men were, to him, highly implausible, and on occasion were stated so diffidently that the defendants appeared to have little faith that they would be taken seriously. Part of the influence of the two church representatives in the court came from the fact that pleas conveyed through them were given the stamp of validity.

The leniency in sentencing that occurred just before Christmas during the study year was an annual custom in G Court. Beginning about 3 weeks before Christmas most of the mandatory and optional (to fines) jail terms of multiple offenders were adjusted so that the defendants would be out of jail just before Christmas. Thus, on December 5th the most common jail term for multiple offenders was reduced to 18 days, and continued to decline on each successive court day, although the fines remained what they would have been at other times. When Christmas came to be less than 5 days away, the optional terms of first offenders (\$10 or 5 days) were also cut down.

One magistrate told an interviewer that the sentences he gave out were affected by the current degree of crowding at the Don Jail; when the population count was unusually high he made his sentencing more lenient than usual in order to relieve the pressure. It should be noted, though, that this magistrate was kept aware of the situation in the jail because special duties took him there several times a week, whereas magistrates are not usually in direct communication with the jail authorities. The fact that the jail population of drunkenness offenders did fluctuate considerably, indicates that this practice was not common.

No account of recurrent patterns of behaviour in the court could account for all the sentences observed during the year. Given the considerable area of "free grace" available to magistrates in such a court, and the fact that each magistrate, each offender, and each spree is in some degree unique, the occasional idiosyncratic outcome is to be expected. An unusually lenient or severe sentence could

and did result from the specific relationship of the personality and mood of the magistrate to the appearance and behaviour of the defendant before him. For example, on one occasion a chronic offender pleaded for leniency on the grounds that he had four children, but because of this plea drew the maximum penalty. The magistrate remarked to the defendant, with acerbity, that he himself had four children but did not drink; a man with these responsibilities who did so deserved no consideration. Examples abound, but there is little point in documenting unpredictability.

Payment of Fines

The use of the fine as a penalty for petty offences is firmly entrenched in our legal system. As an alternative to imprisonment it has certain apparent advantages for all concerned. Offenders are enabled to continue without major interruption in their occupational, familial and other community roles and the state derives revenue instead of being saddled with the costs of incarceration. However, it is also an established part of our legal methods to levy uniform fines for petty offences, a practice that is in its pronouncement impartial and egalitarian but highly discriminatory in its effect on offenders who differ greatly in financial means. Where the alternative to payment is a jail term, the result is a considerable difference in the likelihood of going to jail as one goes down the socio-economic scale. In those jurisdictions where the fine increases with the record of offences, the probability of a chronic drunkenness offender being able to avoid jail becomes very small indeed. The granting of a period of time in which to raise money to pay the fine, a growing tendency in dealing with petty offences, is obviously meant to cut down the differential probability of going to prison, but in practice it does not apply to offenders who are apparently poor "credit risks", the category into which most chronic drunkenness offenders fall.

TABLE V - 3

PROPORTION (PER CENT) UNABLE TO PAY FINES IN COURT^a BY RECORD OF OFFENCES. COMPARISON OF YEAR OF OBSERVATION WHEN AVERAGE FINES INCREASED WITH NUMBER OF OFFENCES AND EXPERIMENTAL PERIOD OF UNIFORM \$10.00 FINE.

	Record of Offences						Total
	1	2	3	4	5	6+	
Year of observation (Graded fines) (Number)	39.9 (573)	68.8 (339)	80.8 (228)	90.1 (172)	90.8 (158)	96.2 (328)	61.6 (2919)
Experimental period (\$10 fine) (Number)	45.1 (128)	46.4 (32)	68.7 (22)	76.9 (20)	78.9 (15)	84.2 (48)	54.4 (265)

^aCases given time to pay not included in Table.

The statistics for G Court summarized in Table V - 3 confirm that the risk of imprisonment is high for chronic offenders. During the year of observation approximately 40 per cent of the first offenders faced with the alternative were unable to pay in court and the proportion increased with each offence. In 96 per cent of the cases where the conviction was for a 6th or subsequent offence, the defendant was unable to pay. Because the average size of the fine increased with the number of offences, we must examine the possibility that apparent differences between offence categories in ability to pay are more a result of the amount than of the greater poverty of men involved in multiple offences.

If we examine the relationship between the probability of not paying and the size of the fine shown in Table V - 4, we find that the two are closely related over the year of observation.

TABLE V - 4

PROPORTION UNABLE TO PAY FINES BY AMOUNT OF FINE

Amount of Fine	Per cent not Paying	
=====	=====	=====
7.50 or less	7.6	(1)
7.51 - 12.50	44.0	(743)
12.51 - 17.50	74.1	(237)
17.51 - 22.50	81.5	(190)
22.51 - 27.50	91.1	(214)
27.51 and over	96.5	(413)

When we control for number of offences, the significant relationship between size of fine and probability of not paying disappears. This would seem to indicate that the failure to pay was entirely a matter of the lower economic status of recidivists, but this should be interpreted with caution because a large proportion of the fines for any single offence category tended to fall within the same class of amount. It seems unlikely that the probability of paying was not also affected in some degree by the size of the fine.

Fortunately, a ready-made experiment was available after the period of observation when a magistrate decided to give all offenders a uniform \$10 fine regardless of their records for a period of two weeks to observe the effect. The results are indicated in Table V - 3. The

proportion able to pay increased in all offence categories, although in 84 per cent of the cases involving a 6th or subsequent offence, payment of even this small amount was not forthcoming. The size of the fine appears to make the greatest difference to men up for a second offence within the year. When the fine was decreased to \$10, the proportion unable to pay dropped from 69 per cent to 46 per cent, approximately the same as first offenders. In other words, the graduated fine appears to bias particularly heavily on men in the early stages of recidivism. By greatly increasing their chances of going to jail, it may help to ensure that they end up in the revolving pattern, or at least arrive there more quickly.

Magistrates in G Court could not avoid knowing how often offenders were unable to pay, for the prosecuting officer asked each defendant after the sentence was pronounced whether he had the money and then directed him either to the anteroom where the money was collected or back to the cells. The irrelevance of the fine for most chronic offenders was sometimes implicitly recognized when magistrates, in discussing the disposition of the case with offenders, mentioned only the length of the jail term side of the option, as in the statement: "I'll give you a choice between the clinic or 30 days in jail". To an even greater extent, the "regulars" discuss the sentencing practices of the Court among themselves as if the optional term were a mandatory jail sentence and without referring to the fine.

To what extent did the granting of time to pay fines cut down on the chances of the impecunious defendant going to jail? In the 9 months following the amendment to the Liquor Control Act, which made possible the granting of the privilege to drunkenness offenders, this form of credit was allowed in 227 cases, only 13.3 per cent of the cases in which the offender was unable to pay his fine on the spot. Unfortunately, we have no way of knowing how many of the remaining 86.6 per cent of the men would have paid their fines if given a period of grace in which to get the money.

The tendency of magistrates in G Court was to develop simple rules-of-thumb for the granting of credit that were compatible with the speedy handling of cases. In general, men who apparently lacked a job or had no residence other than a Skid Row hostel, were not regarded as eligible. Some magistrates refused all but first offenders, and all the magistrates evinced some reluctance to allow the privilege to repeated offenders.

The likelihood of paying within the prescribed time was not the only standard applied by magistrates in determining eligibility. Two other standards were commonly invoked: the extent to which the defendant "deserved" to go to jail, and the source of the money. Deferred payment appears to have been interpreted by some magistrates as a means of evading punishment that should be granted only to the worthy, and some recidivists were explicitly refused on these grounds. One magistrate turned down most youthful first offenders with a statement that typically took the form: "I don't give you young fellows time - you have to learn your lesson". Another refused as unworthy all offenders who were living apart from their wives and families. It was also an unwritten rule of G Court that the money to be used for a deferred payment should not come from the public purse. Where the defendants revealed that the source of the money was to be welfare or social security benefits, the requests were routinely turned down by the prosecuting officer or the magistrate.

Actually, only a minority of those unable to pay their fines in court asked for time to pay. (It was usually incumbent on the offender to raise the issue himself.) Many first offenders may have been unaware that the privilege existed. On some days the defendants were collectively informed of the possibility by the prosecuting officer before the court was opened, but this was conveyed in an announcement that only first offenders should ask for time to pay, a time-saving procedure that certain magistrates apparently requested. The "regulars", knowing the rules of the game, rarely bothered to ask.

The statistics show that the likelihood both of making the request and of having it granted once made, declined as the defendant's record of offences increased. Among first offenders given a fine but unable to pay, 38.8 per cent requested time in which to raise the money; compared to 28.8 per cent of the second offenders in the same situation and 10.5 per cent of the men with three or more convictions. The request was granted in the cases of 67.9 per cent of the petitioners who were first offenders; 40.2 per cent who were second offenders; 26.6 per cent who were at least third offenders. The net result was the granting of time to pay to the following proportions of all offenders of each offence category unable to pay in court:

1st offence	26.3%	(171)	4th offence	4.5%	(6)
2nd offence	11.6%	(35)	5th offence	0	(0)
3rd offence	7.2%	(14)	6th offence	0.3%	(1)
			and up		

In the end, more than half of the men given the fine or term option were taken to jail because they did not pay fines in court and did not get time to pay. The proportion went down with the change in the law from 60.4 per cent in Period I to 56.4 per cent in Period 2. However, we cannot conclude that the smaller average fines and the provision of time to pay in the second period made a difference as small as this indicates. After the change in the law, the repeaters who would previously have been given a mandatory jail term (9.6 per cent of the offenders in Period I), men most unlikely to be able to pay fines, were added to the group given a fine or term option.

Of the men jailed for inability to pay fines, 9.0 per cent were rescued the same day by friends, relatives or employers who came to the jail to pay the fine for them. These appeared to be men who would have been able to raise the money without going to jail if the court had given them a few hours in which to do so. As one would expect, the offenders most likely to be "paid out" in this way were those with only one conviction in the year and those with small fines, since these tended to be overlapping populations. In the year of observation, 15.4 per cent of the first offenders taken to jail for non-payment of fines were freed the same day on payment of the full sum, 11.8 per cent of the second offenders, and 3.6 per cent of the men with three or more offences. The proportion paying in full a fine of \$10 from the jail was 13.2 per cent compared to 10.5 per cent paying a fine of \$20, and 2.6 per cent paying a fine of \$30.

With the elimination of these men, 52 per cent of the offenders ordered to pay a fine ended up serving time in jail. They constituted 48.7 per cent of all the cases brought before the Court, including those that were dismissed or given suspended sentences. If we add to this jailed population the men committed by the Court to treatment within the reformatory system, the probability of incarceration becomes 51.4 out of 100. With the exception of vagrancy, there seems to be no other summary or quasi-criminal offence which carries with it such a high risk of imprisonment once apprehended. ✓

The man imprisoned for not paying his fine was allowed to buy his freedom at any time by paying what was owing. In jail he was regarded as "paying" his fine on a per diem basis by his servitude, the cost to him varying

with the ratio of fine to term decreed by the magistrate. Whereas a man who had served 20 days of a sentence of \$30 or 30 days had in this way cancelled \$20 of his fine and might gain his freedom for the last 10 days by paying \$10, a man sentenced to \$15 or 30 days would be able to cancel his fine at the rate of only 50 cents per day, but if he had \$10 would have had to serve only 10 days before buying his freedom.

Of the men who served time during the year, 16.4 per cent were able to shorten their stay by payment of part of the fine, either with money they had with them when arrested or money brought to the jail by friends or relatives. Surprisingly, multiple offenders are more likely to take advantage of this way out than first offenders. Whereas 11.6 per cent of the first offenders who served time paid part of their fines in jail, 19.4 per cent of the second offenders and 18.0 per cent of the men with three or more offences did so. We have already seen some evidence that the graduated fine significantly increases the probability of second offenders going to jail; their ability to pay a part of the fine in jail also indicates that quite a number of them might have escaped incarceration if they had originally been given a smaller fine.

The size of the part payments made in jail tended to be small. Eleven per cent of them were \$5 or less; 40 per cent were between 6 and 10 dollars; and only 5.2 per cent exceeded \$25. Not surprisingly, the chronic offenders who bought their way out were concentrated in the category of prisoners who paid \$5 or less.

Treatment

The new treatment provision of the Liquor Control Act, that came into force in January 1961, could not be used by magistrates until mid-April, when the opening of the new facilities at Mimico Reformatory was in prospect. Consequently, the discussion that follows refers only to the period between April 19, 1961 and October 31, 1961, when our observations in G Court came to an end. Over this period treatment was ordered in 2.3 per cent of the cases. For about a week in the period just prior to the official opening of the clinic almost all offenders with three or more convictions were sent for treatment in order to fill the institution for that occasion. Thereafter, magistrates became much more selective.

Faced with the responsibility of deciding without professional advice which offenders should get treatment, magistrates tended to develop standards that were easily applied. On the whole, they appeared to be skeptical of the motives of the men who requested treatment and required some statement or proof of earnestness. The suspicion that some men were more interested in the relatively comfortable facilities and regimen of the clinic than in working at a cure was expressed on several occasions. One magistrate, confronted with several requests in succession, remarked that the clinic was becoming "a bum's retreat". The skepticism of some magistrates is reflected in the refusal of treatment in 90 (or 33%) of the 273 cases in which the accused took the initiative in asking for it. ✓

Magistrates differed considerably in the extent to which they used the treatment provision. If we confine our attention to the 4 magistrates who each heard over one thousand cases in the period, we find that the proportion of cases in which treatment was ordered was 4.8 per cent, 1.8 per cent, 1.1 per cent, and 0.7 per cent.

Although magistrates now had the power to compel, they rarely ordered treatment even for multiple offenders without getting the consent of the accused (except during the short period when the clinic was being populated for its official opening) on the grounds that the reluctant patient was unlikely to benefit. A further method of elimination sometimes used was to ask the accused if he would volunteer for 90 days instead of the minimum 30 days, and to take his reluctance or refusal as proof of insincerity. -

When the question of treatment was presented to the defendant by the magistrate, a significant number of the men eliminated themselves by refusing. The 90 cases in which magistrates turned down the men's request were almost balanced by the 93 cases in which the men refused the proffered treatment. (Only 10 of these refusals were rejection of the ultimatum that they volunteer for 90 days or receive no treatment.) Those who gave reasons either said that they did not need treatment ("I can do it myself." "If I get a job I'll be alright.") or stated that they had already taken treatment within the reformatory system and found it unsatisfactory for various reasons. Whatever the real reasons, it is apparent that a significant number of these men either did not desire treatment at all or had objections to this particular type of treatment.

The numerically most important means of elimination lay in the fact that the question of treatment was not raised by either party in 96 per cent of the cases before the Court in this period. First, or very occasional offenders would

have been most unlikely to know that they could volunteer for treatment, but most of the "regulars" must have abstained from asking for reasons other than ignorance.

The outcome of the stipulations of the law, the practices of the courts, and the ignorance or attitudes of the offenders, was that very few were sent for treatment and that the probability of being sent was highest for the most recidivist of the offenders. The proportion of defendants receiving a treatment order in each category of annual convictions was as follows:

1st offence	0.18%	4th offence	4.55%
2nd offence	1.86%	5th offence	7.44%
3rd offence	1.66%	6th or higher	9.09%

Appeals and Motions

The most obvious form of social control over the lower courts is provided by the right of appeal. Not only does this provide for redress in the particular case, but it serves to modify the court practices that are the grounds for successful appeals. The possibility of an appeal is undoubtedly a sanction affecting the magistrate's day-to-day exercise of his role unless, as in G Court during the year of observation, he is dealing with a type of offender who has not been known to seek redress through higher courts.

The Liquor Control Act provides for an appeal by the convicted person - apparently against either the conviction or the penalty - to a judge of the county or district court, as well as an appeal, on questions of law only, by the informant or complainant against an order of dismissal. However, the hearing of an appeal from a G Court decision could not have taken place during the year of observation because it would have been impossible to meet the requirement of Section 140 (12) of the Act (R.S.O.1960), that the appeal "shall be heard and determined upon the evidence and proceedings had and taken before the justice to be called the record". No stenographic record was kept in G Court at this time.

It is symptomatic of the lack of outside interest and the lack of influence and sophistication of the offenders themselves that this anomaly was not brought to light until 1964, when a first offender, a man with an

unusual background as a wartime refugee, brought an appeal. (He was able to do so because the Legal Aid Society made an exception to their usual practice of not handling appeals.) The grounds for the appeal were that no transcript of evidence was available and that the prosecutor was a police officer rather than a Crown Attorney as required by the Act. His Legal Aid lawyer went to court armed with precedents to support his argument that the lack of a record made the original conviction invalid, but argument proved to be unnecessary. When the Crown Attorney admitted that he was not in a position to offer any evidence, the appeal was immediately granted. And the question of the legality of a conviction for a breach of the Liquor Control Act when the prosecution is conducted by a police officer was not brought to issue.

The only other judicial test of G Court practices in the period from 1960 to the time of writing was the result of a motion brought before a judge of the Ontario Supreme Court in 1963, again with the help of the Legal Aid Society. It was argued that the vagrancy conviction (G Court began hearing vagrancy cases in the year after the period of observation) of a 17-year-old youth should be quashed because the magistrate was without jurisdiction to convict on two grounds: (1) that the trial was not held in an open court and (2) that neither the informant nor anyone authorized by law to do so on his behalf appeared at the trial. The judge quashed the conviction on the first grounds but held that the second argument was invalid. In an affidavit, the lawyer had stated that he found no signs indicating that a court was being held in the police station, that access to the court was through a steel door which had no knob on the outside, making it necessary to knock and be admitted by a policeman, and that the only member of the public present was the Salvation Army representative. In his comments, the judge suggested that "the court could be considered open to the public if iron bars which formed the door bore a suitable sign". (Toronto Star, January 18, 1963.)

Following the ruling, a number of formal changes were made in G Court, none of which affected appreciably the fate of the offenders. Signs were put up immediately to indicate the location of the courtroom and later a door was put in to give the public access without the necessity of going through the cells. The policeman-prosecutor took to wearing civilian clothes instead of a uniform. Defendants on remand were permitted to wait in the courtroom instead of joining the line-up in the cells, and, for a time, a court stenographer was added to take a transcript of the trials. When the situation settled down to normal, it was apparent that the innovations had brought in no more spectators, nor had the behaviour of any of the participants changed.

More useful to the chronic offenders than the right of appeal, during the year of study, was the right to apply to the Attorney-General for a commutation of sentence, a measure known among them as a "ticket" or "the A-G's clemency". Whereas most offenders could not have coped with the technicalities of an appeal or a motion without a lawyer, the application to the Attorney-General was simply a hand-written letter from the offender asking for release. Since a guilty plea at the trial did not rule out this form of relief, it functioned as a kind of poor man's appeal, particularly appropriate to drunk cases. The willingness of the Department of the Attorney-General to grant this form of relief reflected the weak moral backing in our society for the punitive treatment of this type of offender.

G Court offenders probably had less reason to apply for clemency than men committed from many other courts in the province, especially in the period before change in the statute when the Court was considerably more lenient than the letter of the law. Clemency was granted 7 offenders in Period I and 5 offenders in Period 2, all of them multiple offenders serving sentences of one to three months. The amounts of "time" they were forgiven ranged from 10 to 49 days. It was reported that in regard to some cases from other courts which gave penalties exceeding the statutory minimum, the granting of clemency served as an inexpensive and unobtrusive way of rectifying a judicial error. This modification of sentences through the exercise of noblesse oblige rather than as a consequence of the assertion of rights by the convicted person, was in keeping with the general powerless position of drunkenness offenders in relation to the judicial process.

THE VIEW FROM THE BENCH

A questionnaire was sent to magistrates throughout Ontario with the cooperation of the Ontario Magistrates' Association. This went to all of the 97 magistrates except those known to sit entirely on juvenile and family court cases. Since 5 magistrates in one large city collaborated in filling out a single questionnaire, 93 may be regarded as the number of potential replies. Of these 59 or 63.4 per cent were returned. The size and types of communities in which these magistrates preside cover a wide spectrum and this, together with other factors, means that their experience with chronic drunkenness offenders is highly varied. Some deal with hundreds of offenders in a year and others with few or none. Consequently, the frequency of any given opinion or sentencing practice is not a reflection of its objective importance in determining the fate of

chronic drunkenness offenders. Furthermore, the self-selection of respondents may create a biased picture. Those magistrates who took the trouble to reply might, for example, be more conscientious and concerned than those who failed to answer, or it might be that most of the non-respondents were magistrates who felt that their replies would not be helpful because they heard so few cases of this type. Since a number of the questionnaires were returned anonymously, it is impossible to check on the representativeness of the replies.

The questionnaire was intended to elicit mainly information on sentencing practices and opinions about changes that might be made in present methods of dealing with chronic drunkenness offenders. The discussion that follows will deal with sentencing practices. The magistrates' suggestions about changes in the law and in custodial and treatment facilities are discussed in Chapter XIX.

Beliefs about Chronic Drunkenness Offenders

The answers to a number of questions gave, directly or indirectly, information on the magistrates' conceptions of and attitudes toward chronic drunkenness offenders. An overall impression is that magistrates tended to share the "liberal" view of chronic offenders as products of unfortunate backgrounds who are in the grips of an addiction beyond their control, rather than as individuals who deliberately chose this mode of life and therefore deserved or would benefit from punishment. The replies to an open-ended question about "the types of men who are chronic drunkenness offenders" generally reflected the view that this is a disadvantaged group, although the replies involved so many dimensions that they were difficult to classify. Only 3.8 per cent failed to answer the question. Lack of education was identified as a characteristic in 71.7 per cent of the replies. In 41.5 per cent of the replies the offenders were characterized as single men, drifters, or lonely men. A background of broken homes was mentioned in 30.2 per cent of the replies. Personality problems in some form were mentioned in 13.2 per cent of the replies and lack of intelligence in 11.3 per cent. A wide range of less frequent answers had in common the implication that the offenders were in some way victims of circumstances.

Unfortunately, only one question was used in an attempt to elicit directly the magistrates' opinions about the problems of alcoholism among the offenders. They were asked: "Do most of these men appear to have lost control over their drinking or are they able to drink moderately if they want to?" An answer indicating that loss of control was characteristic of most chronic offenders was given by

86.8 per cent of the respondents. The phrasing of most of the affirmative answers showed that these magistrates regarded loss of control as a characteristic of alcoholism. A few indicated that loss of control was difficult to identify when talking of these men, because they tended to be motivated to drink to excess in order to forget their troubles.

The following illustrate the range of replies:

- Without exception in my experience, no chronic drunkenness offender is capable of controlling his drinking. Once he has had a drink or two he will not cease drinking until the supply has been exhausted or he has passed out.
- Most of these men appear to have lost control over their drinking and, in addition, they have lost any desire to stop drinking or limit their drinking.

To many of these type of men, drinking in moderation is not their aim; they drink to get drunk, likely so that they may forget their troubles.

I doubt that "control" or "moderation", as those terms are normally used, have much to do with the matter. Most of this class find life more tolerable, or less intolerable with the support of alcohol.

- Most of these men are able to drink moderately, IF THEY WANT TO. There are very few who appear before me at the present time, who have completely lost control.

I believe that most of these men drink because they like to drink. They do not seem at all concerned with the consequences. If they really wanted to stop drinking I believe they could.

The majority of the magistrates revealed that they were highly pessimistic about the chances of rehabilitating men of this type. They were asked: "What proportion, if any, of the chronic offenders who have appeared before you seem to be unlikely to respond to any efforts at rehabilitation?" Since the phrasing of the question did not limit the efforts at rehabilitation to the facilities that exist or methods that have been already tried, the 71.7 per cent of the respondents who thought that most or all of the offenders are unlikely to be rehabilitated clearly regarded them as hopeless cases.

Sentencing

It is not surprising to find that magistrates across Ontario varied over an even wider range in the punishments they decreed for multiple offenders than did the magistrates of G Court. Unfortunately, slightly over one-third of the respondents when asked about the penalties that they "most commonly hand down" for a first, second, and third offence within 12 months, either left the question blank or stated that their sentences were too varied to allow for generalization. The question, by implying routine or automatic sentencing, obviously tended to provoke resistance.

The combinations of fines and terms were so numerous that they cannot be presented in the form of a table. In lieu of this, the range of variation will be described. The fines given first offenders ranged from \$5 to \$35 but one magistrate treated the overnight stay in jail as the full penalty and two gave suspended sentences to all first offenders. The alternative jail terms ranged from 2 to 10 days, the latter being by far the most common jail term.

Fines for a second offence ranged from \$10 to \$75 and the alternative jail terms from 4 to 30 days. Two magistrates indicated that they gave a jail term without the alternative of a fine to second offenders and one magistrate routinely gave them a suspended sentence.

Fines for third offenders ranged from \$5 to \$50 and the alternative jail terms from 7 to 50 days. However, half of the magistrates who replied indicated only a jail term for third offenders and these mandatory terms ranged from 10 to 90 days.

At the time the questionnaire was distributed (January, 1963) the Liquor Control Act provided for a maximum fine of \$50. It also now gave the magistrate the power to order imprisonment for 30 days for the third offender or mandatory treatment for 90 days for any person convicted. Hence, all the magistrates who levied fines of more than \$50, gave mandatory jail terms to second offenders, or gave mandatory terms longer than 30 days to third offenders, were exceeding the letter of the law. One in 6 of the magistrates who answered the question fell in this category.

Suspended sentences appear to be used rather rarely for true chronic offenders in courts throughout Ontario. Although the magistrates were asked about the circumstances in which they gave suspended sentences and the conditions they usually attached, rather than how frequently they used this as the sentence, the criteria of eligibility that they stated were such that most chronic offenders would not qualify. One-quarter of the responding magistrates stated explicitly that they never or rarely gave suspended sentences to chronic offenders. The eligibles most commonly mentioned were youthful offenders and first offenders who met certain conditions.

A wide range of other criteria that would rule out chronic offenders included a long interval since the last offence, hardship to the offender's family, having a home and a job, and being the type of person who would be deterred from getting drunk by the threat of a sentence. On the other hand, one magistrate in 7 mentioned certain conditions of exceptional hardship which would qualify chronic offenders, old age being the most common. Three magistrates from smaller communities said that they gave suspended sentences to transients, presumably in the expectation that they would move on.

The answers embodied contrasting conceptions of the function of suspended sentences and of the magistrates' power to award them. Some adhered to what would appear to be the formally correct use of the suspended sentence - if the offender transgressed during a stated period he was returned to court and a sentence imposed. These magistrates, according to their statements, tended to use the measure only when there was a good chance that the offender would modify his behaviour because of his desire to avoid the sentence. But the majority of magistrates conceived of the suspended sentence simply as a form of leniency without conditions attached.

In view of the explicitness of the law, it is surprising that only four magistrates stated that they did not have the legal power to grant suspended sentences to chronic drunkenness offenders. Only one stated his grounds: "My present understanding of the law is that when a minimum penalty is provided under L.C.A. (in this case Sec. 106(7) thereof) the Court cannot suspend sentence and direct probation". (He apparently did not know that the statute had been amended.)

The polar positions in regard to frequency of use among those magistrates who regarded the suspended sentence as a permissible form of leniency, are illustrated by the two following quotations:

I've only done this on rare occasions - for a first offence by an obviously righteous, non-"alcoholic", who has resided for a considerable time in the locality and is of advanced years.

Suspended sentence is given to all first offenders once each year; usually they are advised that they will go to jail thereafter if they appear again in the same year, but as a matter of fact they usually receive another suspended sentence, unless it is winter time when a term in jail is given not for punishment even on the basis of rehabilitation, but because they have no other place to go.

Other devices apparently can be used instead of the suspended sentence to obtain the same ends. Extended remands for sentencing can, as four magistrates indicated, be used in the same way as a genuine suspended sentence contingent upon good behaviour or, as one magistrate indicated, it could be used as a form of unconditional leniency. The two variants are illustrated below:

Rather than suspended sentence I remand them until called upon for sentence. And then forget the whole matter.

The most useful method, which is often employed where the offender is young or does or may work, and during the summer and fall months of the year, used with surprising success with old chronic offenders who are unemployable for a large portion of the year, is when they are convicted of a third offence, with the concurrence of the offender and the Crown Attorney, adjourn the matter from month to month, at the same time warning them that if they are brought in on a further charge during the current month the former charge will automatically be dealt with I have found this method to be surprisingly successful with a large proportion of real chronic offenders in other than the winter months. A number of chronic offenders will find some employment or at least stay out of trouble until early winter weather commences, then they return to jail for a few months. I use this procedure consistently with older offenders who at one time were believed to be unemployables and in fact often work and are out of custody some eight months of the year.

Probation was rarely used for the few chronic offenders who were given suspended sentences. Only 3 of the magistrates gave answers to a question on the usefulness of probation that indicated that typical chronic drunkenness offenders were sometimes put under the supervision of probation officers. Fully two-thirds of the respondents stated that they never put chronic drunkenness offenders on probation. Two main reasons recur in the answers. First, that the only proper condition - abstaining from the consumption of alcohol - is one that they know will not be kept. Second, that the available probation officers are already overworked dealing with cases that are less hopeless and less time-consuming.

I have yet to place such an offender on probation. I feel that the chance of success in rehabilitation is so slight that the over-burdened probation officer should not be saddled with this sort of person.

The probation officers have indicated over the years I have been sitting that chronic drunkenness offenders require too much personal attention, they are a burden in the matter of probation, for this type of person is generally considered futile. One of the main reasons given is that Magistrates make it a point that one of the conditions of the probation recognizance be that the accused shall not drink alcoholic beverages and shall not be found in a drunken condition during the period of probation. This, of course, is almost a prohibitive condition and yet is one that would be necessarily used.

Commitment for Treatment

At the time the magistrates answered the questionnaire, the treatment alternative had been in the Liquor Control Act for two years, a period sufficient for magistrates to develop standards for selecting candidates and to observe the results of treatment with chronic offenders known to them. The magistrates were asked: "On what basis do you decide whether a man should be committed to the clinic at Mimico for treatment?" Most magistrates, as might be expected, used the power selectively. (If they had not, the facilities at Mimico would have been flooded at an early date and some measures to stem the flow would have been necessary.) Only 4 of the 58 magistrates who answered this question implied that they routinely sent all the chronic offenders who appeared before them and these magistrates, like the following, were from small communities that would produce only a handful of recidivists:

Normally, at the second time the drunk appears in court I will inform him that if there is a repetition the next time he will be committed to the Clinic at Mimico for treatment and, normally, the third offender within a period of one year is committed, and I would think there would be less than a dozen in the year committed by me to Mimico.

Most of the remaining magistrates tried to use some method of distinguishing those who would benefit from the treatment from the hopeless cases. What was required most commonly (by 38 of the magistrates) was evidence of motivation on the part of the offender. The evidence required by the majority was simply the offender's statement that he was willing to take treatment, as exemplified in the following replies:

When a subject with a record of drunkenness convictions appears before me, I usually ask him if he is interested in taking treatment. If he says; "Yes", then I commit him to the Clinic.

I use the provision every time desire is sincerely indicated.

At any time when an offender appears, I make him aware of the treatment facilities that exist at Mimico. If he will go willingly I do not hesitate to use this provision.

The data on the numbers of offenders committed for treatment from various communities in Ontario indicate that many of the magistrates who assigned to treatment only those men who expressed a desire for it, ended up by committing few or none. The reason, as indicated in the following four replies, lay partly in the apparent lack of interest on the part of the men themselves.

I have not yet sent anyone to Mimico, for treatment, due to the fact that the number I have suggested this to have indicated that they do not want to quit drinking and I felt there was no use in wasting time and effort unless the person had some desire for assistance.

I have had a disappointingly low percentage that are really willing to try.

Not very often. The chronic offenders tell me that they will be as bad again as soon as they get out.

I have used this provision very little due to the fact that treatment has not been requested by the individual, and even when suggested to them by myself they do not appear interested.

Only 3 magistrates indicated specifically that the expressed desire of the offender for treatment was not a good criterion - but the reasons they gave differed:

I use it often ... The majority relapse on return but none are worse. I do not try overly to extract expressions of desire to go - he is a poor judge of his own needs.

There are some who ask for this treatment, but it seems some of this type who request for treatment are not sincere but regard this as a "soft" way of spending their time in custody.

When pressure and/or encouragement are inadequate to induce the offender to become involved in AA or local programs, and it is clearly indicated that he has lost control ... and in other cases in the forlorn hope that the knight of the road just might get the message.

A few magistrates specified criteria other than expressed desire, that would rule out most chronic offenders:

The younger men and youths are usually recommended for treatment at the Clinic at Mimico providing the Department finds them suitable.

In other words, a transient derelict with no family or home, no position, prospects, and little education, is a very doubtful prospect. However, if a man's family and employment background in previous years has been at all acceptable and he has the necessary intelligence to understand his problem and an apparent sincere desire to overcome it, he would appear to be a fit subject for the Clinic.

Past record - has the man ever made an effort - how long has complete lack of control existed and are there still some ties to the family - will they help.

Namely on motives and an indication from previous records that there have been lengthy periods where he has been able to refrain from drinking on his own efforts.

From the foregoing it is apparent that some magistrates regard the treatment at Mimico as suited only for men with social resources, while others conceive of it as meant for men with whom everything else has failed.

Three magistrates stated their impression that the treatment facility would not accept men who had been there before (an erroneous impression), 4 volunteered the opinion that magistrates as a matter of policy should not send men for a second time, and others probably would have said the same thing if they had been asked specifically. The same may be true of the opinion, asserted by one respondent without being asked, that previous commitments should have no bearing on the decision.

A few of the replies contained explicit evidence that the magistrate had, on the basis of his experience, become pessimistic about the efficacy of this form of treatment for chronic offenders. Since, again, the information was volunteered rather than evoked in response to a specific question, we have no idea how widespread this opinion was. The following are examples:

Although there are exceptions I use it only if the man himself requests it. In the cases where this has been done my experience is that it is generally speaking a failure. I do not think that the clinic at Mimico is set up properly although I have no idea on how it should be set up. I only know that any I have sent there return no worse perhaps but certainly no better than when they left. Again this goes back to the theory that they can only be helped if they themselves desire to be helped and most of my regular offenders do not come in this class.

I have probably sent 10 or 15 to Mimico in the past couple of years and I would say that two-thirds of them have been back in court again.

More objective evidence of the very considerable difference between magistrates in the use they make of the treatment provision in the Act is obtained from an examination of the admissions to the Alex G. Brown Clinic over a period of time. Between January 1961, when the compulsive treatment clause became law, and July 1963, a total of 1,164 offenders was committed for treatment by the courts. Sixty-one per cent were committed from Toronto. Toronto's rate of commitment on a per capita population basis was exceeded only by that of Sudbury, which lies 240 miles from Toronto. No pattern is to be found in the highly disparate rates of commitment from other communities. Of the 18 cities of 20,000 population or over that lie within 150 miles of Toronto, 3 had no commitments for treatment during the 29 months, 6 had rates of commitment of less than 1 per 100,000 population, and the rates for the others ranged up to 7 per 100,000 population. No offenders were sent for treatment from 7, or 24.1 per cent, of the 29 cities or towns with a population of 10,000 and over in Ontario. Distance is apparently not an insuperable obstacle since we find relatively high rates of commitment from Sudbury, North Bay, and Port Arthur. However, 3 of the magistrates from the north-western section of Ontario did state that they rarely sent men for treatment because of the time and complications involved in transporting them.

In summary, the present system of commitment for treatment through the courts without professional advice results in a haphazard selection of patients which bears no constant relationship to the offender's need for, or amenability to, treatment. Many magistrates are constrained from using the treatment provision by pessimism about the outcome, a conviction that often has some basis in experience. For the treatment facility this has meant an unpredictable flow of patients varying in the use they can make of the treatment offered. For the offender, the system has some of the elements of a lottery. Depending upon the magistrate before whom he appears, he may or may not be informed of the possibility of treatment, his wishes may or may not be consulted, and his expressed desire for treatment may be accepted as adequate proof of motivation, as indicative of a wish simply to do "easy time", or as irrelevant.

THE VIEW FROM THE DOCK

Seen from the prisoner's dock, the court is quite a different place. The defendant stands below the bench, looking up, symbolizing the subordination that is manifest in the way he is ordered and controlled. The parties in trials of all types are subject to discipline within the court, but the degree of constraint experienced by the defendants in intoxication cases probably has few parallels. To the outsider, the crucial part of any trial might appear to be the adjudication of guilt and the sentence, the practical importance of the outcome outweighing any small irregularities or humiliations in the proceedings. To chronic offenders who are accustomed to jail but are highly conscious of their lack of status, the manner in which they are tried may be the focus of much stronger feeling than the outcome. This clearly emerged from the interviews with the Toronto chronic offenders and is summed up in the term "Kangaroo Court", which occurred with striking frequency in their discussions. For them, it was a mock court, not only because the outcome was inevitable, but also because of the peremptory way in which they felt they were treated. This resentment is not confined to drunkenness offenders in Toronto, since similar or equivalent procedures tend to be common to drunkenness hearings throughout North America. This is to be seen in the following comment of an American municipal court magistrate, reporting on an unusual occasion when a group of drunks and vagrants united to retain two lawyers to bring habeas corpus actions:

In court, each was called upon to testify and, as might be expected, they didn't confine themselves to the issues of the habeas corpus action but rather proceeded to give all their grievances against municipal court treatment both in Denver and throughout the land. Guess what they resented most? The fact that they weren't given a chance to discuss their case with the judge - that they were herded through. I was forced to admit that there was considerable validity to their complaint. When I first came on the particular bench, we had been following the practice of letting the bailiff do the arraigning before the court convened, leaving the judge only the responsibility to impose sentence. This was done with the prisoner standing in the prisoner's box across the courtroom with all the other prisoners and with the judge politely asking if he, the defendant, had anything to say. Very little was said except by the most brazen and least worthy of the group. We allowed not more than one-half hour for arraigning the entire group, frequently numbering twenty to forty individuals. Obviously there was little time for individual consideration. Now, here they were in court testifying that mainly all they wanted was a simple chance to speak to the judge face to face. Since that time, I don't think any drunk has ever been arraigned in Denver who hasn't been given a chance to come up and talk to the judge as long as necessary (2, pp 6-7).

The Toronto drunk court seems to go further than many in providing the accused with experiences that can be interpreted as denials of justice. The location of the court in a police station removed some distance from the other magistrates' courts of the city, the absence of spectators, the use of a police officer as prosecutor, and numerous other practices, appear to foster to an unusual degree the image of a "Kangaroo Court". Several of the more experienced "regulars" compare G Court unfavourably with courts in other cities, or the present system with earlier days in Toronto when drunk cases were heard in a "real" court in City Hall.

The criticisms of the courts, expressed in interviews by the Toronto offenders, fall into two categories: (1) criticisms of the sentences and fines handed down by the magistrates, and (2) criticisms of the setting and procedures of the trial. Most of the interviewees, if asked specifically, would probably have stated that the sentences and fines were unjust but only a minority mentioned this grievance when asked an open-ended question on the way that the courts deal with drunkenness offenders. Whereas only 12 per cent of the men remarked on the severity of sentences or fines in the drunk court and 18 per cent on the inconsistencies in sentencing, 74 per cent expressed negative feelings about some aspects of the conduct or setting of the trial.

The beliefs and feelings of the men are best expressed in their own words. The quotations that follow illustrate most of the recurrent themes in the interviews:

Heavy Sentences;

Whether you plead guilty or not guilty - boom? - thirty days or two months out of your life. That's a big hunk out of your life for just being drunk.

What good does it do for the courts to put me away for three months when I'm back to normal in two or three days? It's too much time for the offence. Definitely. It's not solving the problem at all.

They give too long a sentence - especially for people with jobs to go back to. But they never think of asking you if you have a job to go to.

Disparity of sentences;

It's really silly. Some fellow will have 11 charges and get 30 days; some other fellows 3 charges and get 2 months.

The magistrates' court doesn't seem to have any regular system. It just seems to depend on the way the magistrate feels.

Routine processing;

You can't plead or explain, except for guilty or not guilty. You can't put 125 men through in less than an hour and get a chance to plead. What can you do? If you are remanded, the police come in and they push you in anyway - so you lose the remand time anyway. You might even get a tougher sentence.

It's strictly a kangaroo court as far as the public is concerned. You just walk in and there is the magistrate. He doesn't ask a thing - just gives the sentences.

I have no god-damned use for the way they treat me. They don't take nothing into consideration. They can run off 100 men in an hour. There is no justice there - like a kangaroo court, in and out.

They're crooked, kangaroo courts. They don't try you properly at all. They give you whatever they think. Toronto is the toughest town of all for drunks. "Courts" is a laugh as far as being judged properly. They're just herded in there like a bunch of sheep.

Collaboration between Court and Police;

The sergeant practically tells the judge what to sentence you. It's a kangaroo court. You haven't a chance in the world once you're in there. You ask for a break and you don't get it.

It's a big joke as far as I'm concerned. The sergeant is telling the magistrate what to do and then putting you in without any chance to pay a fine or anything else.

Very badly. You're a liar to their argument. The police and the courts work together and you don't have a chance.

Terrible. I think it's kangaroo myself. It seems that the magistrates don't run the court. It seems that the policemen run the court.

Closed Court;

Not very good. It's a closed court. It would be illegal in any other part of Canada. You couldn't have a witness along. It wasn't like that in City Hall.

I don't see why the taxpayers should pay for this. No one can get into a closed court - so you're beat. You could get a lawyer - but who has that kind of money.

There are no spectators in court - only a Sally Ann man and the police. The Sally Ann man is only there to make a few dollars off the man. The way men are put through court is like a production line. The trial is just a travesty.

Other;

I think it's unfair. I don't think it's justice at all. They should have proper defence. There should be somebody down there to defend them.

I don't think they're treated fair. There is a bunch of guys in here could pay their fine. If you're driving and drunk you get two weeks to pay a fine. But a drunk, they won't give him ten minutes to go out and collect. I could have got the money if I could have got out.

I think it should be a night court. When a person is being held overnight for court, he gets dirty and disarranged in the tank and you have to look your worst when you go to court. Even if you come in clean and tidy.

The currency of the term "kangaroo court" among the men, as well as the striking similarity in the content and phrasing of many of their complaints, is evidence once again of the existence of a subculture among the "regulars". However, the shared norms relating to the courts cannot be labelled deviant since most of the criticisms reflect the traditional conceptions of a proper trial embodied in our common value system. The offenders may not feel that drunkenness should be an offence at all but, given the fact that it is and that they are taken to court, the ideal rules of the game should, in their view, be obeyed.

A few of the men - 7.1 per cent of the total - responded to the question with remarks approving of the court and another 8.3 per cent approved but with qualifications. However, most of the favourable remarks fall short of warm praise, as the following examples indicate:

I've always found them alright. I figure I deserve what I get. It's my own fault.

I would say O.K. They keep seeing me and the other guys coming back and they get sick of it. They listened to me a couple of times and let me get off with no sentence. I got off twice in one month from the same magistrate.

If you're reasonable and tell the truth they're alright. I tried to explain that I have to take pills but I blacked out in court. They seem to treat you fairly enough.

I think the courts are fair. I know of one guy who was caught with an open bottle in his pocket, but he was only charged with being drunk in a public place. Only once I got a 40-day sentence for vagrancy that I thought was unfair.

They treat me fair enough. I seem to get about the same treatment as all the others. I got what I had coming to me.

I'd have to say they treat men fairly. After all, that's their job, they should know what they're doing. Sometimes though I think they give out too much time and use up too much of the taxpayer's money. On the other hand, if some of the guys weren't put in here, they wouldn't be alive.

They could be more tolerant and understanding. But then they have so many to handle and not enough time. I guess they do a good job.

CONCLUSION

The present study has dealt with the role of the courts in the revolving door phenomenon, using a case study of the Toronto "drunk court", interviews with chronic offenders who are its regular clients, and questionnaires answered by Ontario magistrates as a basis for general statements about the nature and consequences of public intoxication trials. The discussion has revealed some of the anomalies that result when the courts are called upon to use the traditional machinery of criminal justice to deal with chronic petty offenders who are predominantly homeless, unattached men and alcoholics.

Formally, the courts perform the same functions in drunk trials that they do in other criminal cases: what might be called the "sorting-out" function and the "legitimation" function. The sorting-out function is the outcome of the various decisions that result in a specific disposition of the case: decisions as to whether a trial should be held at all, decisions as to guilt or innocence, and the decisions regarding the penalty. The accused are put into categories which define what, if anything, may be done with them subsequently. When the trial has in theory been conducted according to the rules and disposition based on the law, what is subsequently to be done to the accused

is legitimated. The authority of others over the offender while he is still in custody or under supervision is now legal and, therefore, morally acceptable and may be backed by use of force.

But the sorting-out function as it is performed in the typical public intoxication trial is, as we have seen, rudimentary. The hearing of evidence as to guilt is eliminated in all but a few cases by the predominance of guilty pleas. The "individualization" of sentencing is discouraged by a number of factors that have been discussed, including the paucity of sentencing choices in practice open to magistrates, and the pessimism engendered in them by this class of offender. In the urban community each magistrate tends to develop his own scale of penalties, attuned most often to the defendants record of offences, and to apply this routinely and without inquiry in the majority of cases. In smaller centres some magistrates may spend more time and use more particularistic standards.

For the majority of defendants who lack both money and affiliations with kin or friends who could provide it, one of two outcomes is possible: they may either end up in jail or be released without penalty. The former is the more common result in Ontario, although magistrates are willing to use the suspended sentence where it is not formally applicable or such devices as indefinite remands to allow for release without punishment. A few chronic offenders are able to pay fines and a few, in Ontario, are sent for treatment, but in practice the public intoxication trial serves mainly to ratify the police decision regarding the arrest and to legitimate the jailing of the offender or his release without punishment.

The way that the offenders are dealt with both presupposes and helps to ensure their joblessness and lack of influence. It is unlikely that the present system would have come into being if a majority of the defendants were men with jobs, families and other responsible roles. The use of arrest rather than summons and mandatory court appearance during working hours, would be highly disruptive if applied to conventional citizens. The very different way that minor traffic offenders are handled is undoubtedly related to status differences, as well as to the fact that they are not usually incapacitated by alcohol. They are summoned, allowed to avoid trial by advance payment of the fine, and even, in some communities, provided with a night court - with the result that the threat to their jobs and other roles is minimized. In contrast, the method of dealing with drunkenness offenders increases the difficulty of maintaining a job and a residence, and contributes to the weakening

of family ties where these exist. The implicit assumption that the defendants are jobless and unattached has in some degree the character of a self-fulfilling prophecy.

Another unintended consequence of the mode of dealing with intoxication cases is the shared resentment of the offenders, epitomized in the term "kangaroo court". The frustrations they experience lead to the negative beliefs about the courts that are standardized and elaborated in their subculture, thus contributing to the solidarity and alienation of Skid Row drinking society.

The offenders' criticisms reflect an ideal conception of a fair hearing in criminal cases, their version of the standards that might be applied if the drunk court proceedings were challenged in higher courts. The fact that the appellants were successful on the two occasions when convictions in G Court were tested by way of motions or appeals, indicates that some of their complaints have a formal-legal basis. However, the apathy, pessimism, and lack of resources of most defendants, make both "not guilty" pleas and appeals to higher courts rare events. While the "regulars" believe that they have a right to tell their story lacks legal validity in the cases where they have already entered a guilty plea, it does correspond to popular ideas of substantive justice.

A more widespread and serious challenge to the legitimacy of public intoxication trials as they apply to chronic offenders, has been the growing acceptance of the "illness" conception of chronic alcoholism. Both the moral acceptability and the efficacy of punishment are put in question by the doctrine that the intoxication of alcoholic defendants is the result of a dependence on alcohol that entails loss of control over their own actions. The resultant value-conflict, it has been argued, tends to promote discontent among magistrates and helps to explain why they sometimes resort to non-statutory devices to blunt the punitiveness of the law.

The claims of the illness conception have received legislative recognition in Ontario and some other jurisdictions that have by statute given the courts the power to commit alcoholic offenders to places of treatment. In addition, higher courts in the United States have begun to recognize chronic alcoholism as a defense in public intoxication cases. In a recent decision (March 31, 1966), the Judges of the United States Court of Appeals for the District of Columbia (3), sitting en banc, based their ruling on two main grounds. First, they interpreted a 1947 Act entitled,

"Rehabilitation of Alcoholics" (an Act of Congress dealing with the District of Columbia), as precluding, in their words, "attaching criminality in this jurisdiction to intoxication in public of a chronic alcoholic" (3, p.3). The fact that the treatment facilities contemplated in the Act had not been provided, did not in the Court's view justify sentencing the alcoholic as a criminal. Second, they stated that the decision would have been the same if the Act had not existed because "a chronic alcoholic cannot have the mens rea necessary to be responsible criminally for being drunk in public" (3, p.4), that he is "in fact a sick person who has lost control over his use of alcoholic beverages" (3, p.5). The written judgment cites not only legal precedents but also a large number of scientific opinions supporting the illness conception.

The trend to eliminate the conflict by giving legal priority to the illness definition, leads to the question of alternatives to the present system. The moral problem expressed in the legal argument might be solved by doing away with punishment, but a laissez-faire policy that involved nothing more than refraining from arresting and charging publicly intoxicated alcoholics would have consequences likely to prove widely unacceptable. The failure of the police to do anything about drunks in the streets would run counter to expectations regarding public order and the protection from harm of incapacitated persons. It would also cause concern from a humanitarian viewpoint if Skid Row alcoholics were not given an opportunity to recuperate physically, at least equivalent to that currently afforded by the jail.

Ideally, the illness conception embodies an obligation to bring the ill person to treatment, but the findings reported here cast doubts on the efficiency of magistrates' courts for this purpose. To require a magistrate, on his own, to decide whether the defendant is a suitable candidate for treatment, assumes that he is capable of assessing the defendant's motivation and needs, and that he understands the type of treatment available in the facilities to which the alcoholic may be sent. The magistrate has no choice but to develop his own standards for ordering treatment and to apply them to the scanty data that can be elicited from the defendant's offence record, appearance, and statements in court. We have seen that in Ontario this has resulted in a considerable variation among magistrates in the proportion of inebriates that they send for treatment. Although the criteria they use differ somewhat, the general tendency has been to send only chronic offenders; the occasion of the court appearance has rarely been used to identify and direct to treatment alcoholics who have previously been able to avoid arrest or men with incipient problems. The treatment facility, in turn, has had no control over the quality or number of patients admitted.

The method of sorting-out would have more far-reaching effects in a system that afforded a choice of several treatment and caretaking facilities, each meant for inebriates of a certain type. If such a system were planned, the efficiency and feasibility of alternative organizational arrangements for sorting-out would have to be considered. One choice would be to provide the courts with professional resources for examination and diagnosis on the assumption that the magistrates would, by and large, follow this advice. At the other extreme, decisions about treatment could be made entirely a matter of professional responsibility and the role of the courts in sorting-out eliminated. This would mean doing away with public intoxication as an offence and would, therefore, have the advantage of eliminating the conflict caused by the application of both the criminal and illness definitions to the same behaviour. Since various compromises are possible and all would entail changes in other aspects of the system, detailed discussion of the subject is left for the concluding chapter of the study.

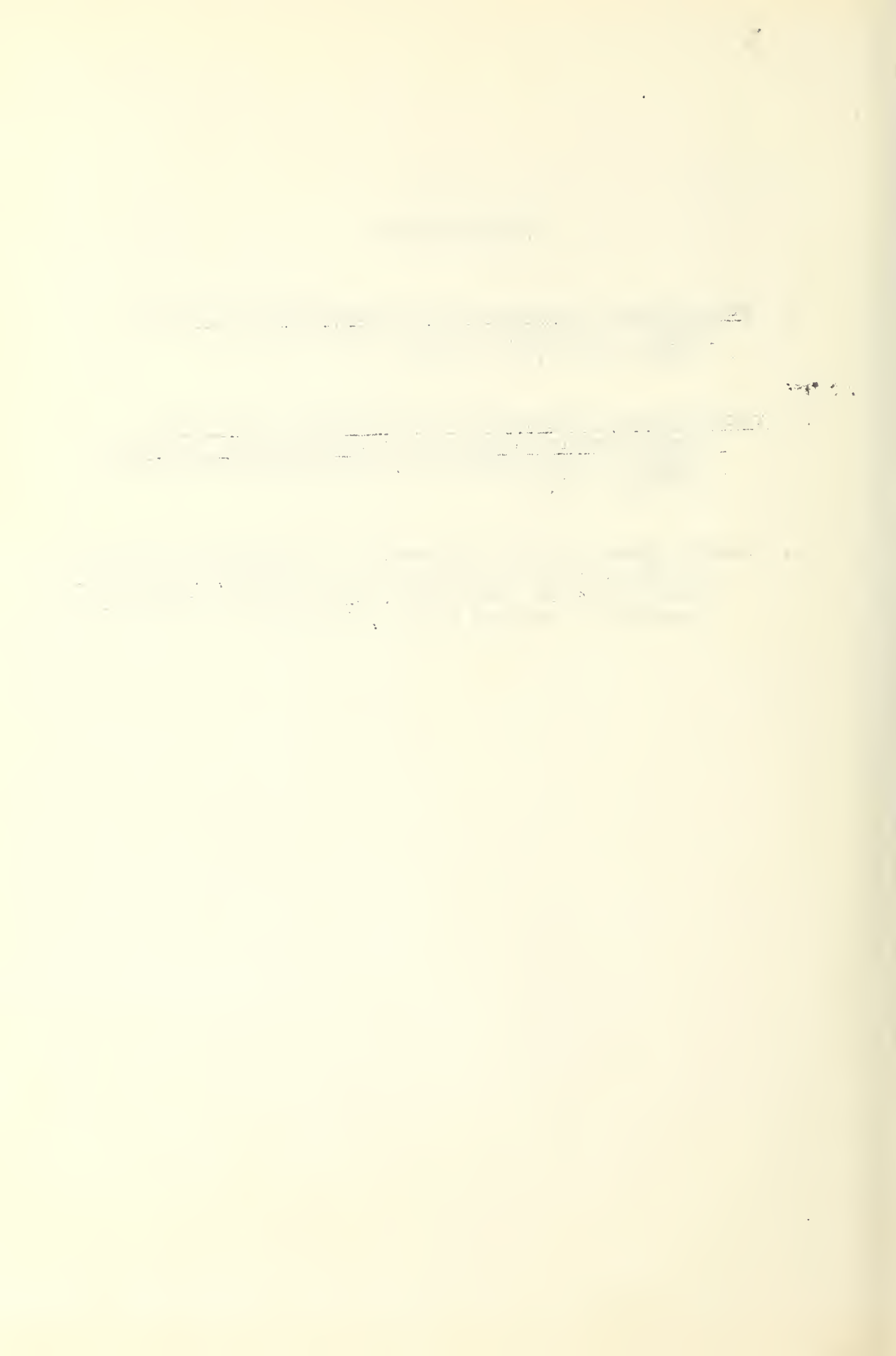
What of the legitimation function of the court? Can recommendations regarding the disposition of inebriates be enforced in any other way? One answer is that in our society doctors and other therapists issue orders that are obeyed, sometimes at great cost, and cause people to confine themselves in hospitals and other places of custody - and this, in the typical case, without the use of coercive sanctions. In societies where the professional role is incorporated in the common value system, people believe that in the therapeutic relationship the professional will use his superior knowledge only in the best interests of the patient and the community. The advantage of this type of legitimation is that it carries with it the expectation that the patient will voluntarily cooperate, and, as we know, most of the time patients do accept this moral obligation as binding on them.

Nevertheless, the use of compulsion in the treatment of certain illnesses has come to be accepted as necessary in our society. Legal sanction is given, for example, to the medical care in total institutions of the mentally-ill and individuals with tuberculosis. Generally this has been justified as being in the best interests of the sick person, the community, or both. But in countries with a common law tradition, it has also been regarded as desirable to provide for a court hearing or review at some stage if the individual is being deprived of his liberty. Legally-sanctioned

compulsion and a court hearing might prove to be necessary in a professionally-manned system dealing with public inebriates as sick persons, but these measures might be reserved for the minority who would refuse to submit voluntarily to examination, treatment or domiciliary care. The alternatives would be to leave the recalcitrants at large, unattended, or to allow them to continue indefinitely in the revolving door - both admissions of defeat at odds with the activist orientations of our culture.

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